84-5059

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, ex rel., PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

CAUSE NO. _____

AFFIDAVIT OF MAILING AND CERTIFICATE OF SERVICE

I, Patrick Ramirez, who being first duly sworn upon my oath, depose and say that on this 5th day of July, 1984, I served a true and correct xerox copy of the following-listed documents, by first-class, postage prepaid, first-class, United States Mail, upon the Honorable Linley Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana 46204:

(a) Motion for Leave to Proceed in Forma Pauperis and Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis;

(b) Motion for Appointment of Counsel;

(c) Petition for A Writ of Ceritorari to the Indiana Court of Appeals and Appendix; and,

(d) Affidavit of Mailing and Certificate of Service.

I further state that on the above mentioned date, I filed one original type written copy of each document listed above with the Clerk of the United States Supreme Court, via certified, postage prepaid, return-receipt requested, United States Mail.

Patrick Ramirez
Petitioner pro se

Subscribed and sworn to before me this 5 day of July, 1984.

Notary Public

MY COMMISSION EXPIRES ON:

Oct 26th 1984
Month Day Year

County of Residence

IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

ORIGINAL

UNITED STATES OF AMERICA ex rel.,
PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE
INDIANA COURT OF APPEALS

Patrick Ramirez
Petitioner pro se
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Greencastle, Indiana 46135-0076

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QUESTION PRESENTED FOR REVIEW

Does a state court have jurisdiction to try a defendant in direct violation of Article V, Subsection (d), of the Interstate Agreement on Detainers for crimes which were not contained in the untried informations, and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer used by state prosecuting authorities to obtain temporary custody of the defendant, under Article IV of the Interstate Agreement on Detainers?[1/]

1/ 18 U.S.C.App.

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

UNITED STATES OF AMERICA ex rel.,
PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS

The petitioner, Patrick Ramirez, respectfully prays that a writ of certiorari issue to review the judgment of the Indiana Court of Appeals entered herein on the 26th day of October, 1983.

OPINION BELOW

The Indiana Court of Appeals entered its Opinion affirming the trial court's judgment denying Petitioner's pretrial motion to dismiss on the 26th day of October, 1983. A copy of the Opinion is attached hereto as Appendix A, and is reported at 455 N.E.2d 609.

Following the affirmance of the trial court's denial of Petitioner's pretrial motion to dismiss, Petitioner then timely filed a petition for rehearing with the Indiana Court

of Appeals. The petition for rehearing was denied by that court, without written opinion, on the 1st day of February, 1984. A copy of the Indiana Court of Appeals' notification that the petition for rehearing had been denied is attached hereto as Appendix B.

Following the denial of rehearing in this cause, Petitioner then timely filed a petition to transfer this cause with the Supreme Court of Indiana. The petition to transfer was denied by the Indiana Supreme Court, without written opinion, on the 11th day of May, 1984. A copy of the Indiana Supreme Court's notification that the petition to transfer had been denied is attached hereto as Appendix C.

JURISDICTION

This case originated in the Howard County (Indiana) Superior Court, NO. II. After conviction by a jury of three counts of Dealing in a Schedule IV Controlled Substance on the 17th day of May, 1982 (date of conviction), Petitioner appealed to the Indiana Court of Appeals. On the 26th day of October, 1983, that court affirmed Petitioner's convictions and the trial court's judgment in all respects, except for the amount of good time credit to which the Petitioner was credited.[2/] With respect to the good time credit, which is not at issue in this proceeding, the Indiana Court of Appeals remanded this case to the trial court for recalculation and an appropriate award of credit.

2/ The written Opinion of the Indiana Court of Appeals is attached hereto under Appendix A.

Petitioner thereafter filed a timely petition for rehearing with the Indiana Court of Appeals, and the petition for rehearing was summarily denied by that court on the 1st day of February, 1984.[3] Following the denial of rehearing, Petitioner then timely filed a petition to transfer this cause to the Supreme Court of Indiana, which was denied by that court without written opinion on the 11th day of May, 1984.[4] Petitioner's "Verified Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the Indiana Court of Appeals" were filed within sixty (60) days thereafter. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

STATUTORY PROVISIONS INVOLVED

18 U.S.C.App., Article V, Subsection (d):

> The temporary custody referred to in this agreement shall only be for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge arising out of the same transaction. Except for his attendance in court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution. West's United States Code Annotated, Supplementary Pamphlet 1969 to 1983, p. 449.

3/ The Indiana Court of Appeals' summary denial of the petition for rehearing is attached hereto as Apendix B.

4/ The Indiana Supreme Court's summary denial of the petition to transfer is attached hereto as Appendix C.

INDIANA CODE 35-2.1-2-4*, Article V, subsection (d)

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of (sic) complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a s able jail or other facility regularly used for persons awaiting prosecution. West's Annotated Indiana Code.

STATEMENT OF THE CASE

On March 20, 1979, Petitioner was charged by information in the Howard County* (Indiana) Superior Court Number II, under Cause Number 424, with three counts of dealing in a schedule IV controlled substance (Dizepan), class C felonies. (R. 7-13).[5/] The incidents on which these charges were based occurred on January 28, 1979, March 9, 1979, and March 12, 1979. Ibid. Then, by a two-count information, dated February 6, 1980, Petitioner was charged in the Howard Superior Court Number II, under Cause Number 470, with two counts of dealing in marijuana, class D

*Effective September 1st, 1982, this statute was reassigned to I.C. 35-33-10-4.

5/ The abbreviation (R. _____) refers to the state court record.

felonies. (R. 557). These later crimes were based on incidents which occurred on December 17, 1979, and December 21, 1979. Ibid.

On March 16, 1981, while Petitioner was serving a sentence in the State of Michigan for dealing in cocaine, the prosecuting attorney for the 62nd Judicial District, Howard County (Indiana), mailed the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause Number 470, dealing in marijuana, requesting the informations be filed as a detainer against Petitioner. (R. 556-558; 1128-1132). On June 23, 1981, the prosecutor followed upon by mailing an Agreement on Detainers Form V notifying the State Prison of Southern Michigan that Petitioner was charged ... Howard Superior Court Number II with three counts of dealing in marijuana under Cause Number 424.[6] (R. 1128-1132).

The Michigan warden notified Petitioner by Michigan Department of Correction Agreement on Detainers Form I that an untried Howard County (Indiana) information for two counts of dealing in marijuana had been brought to his attention by the Indiana prosecutor. (R. 557-558). On March 19, 1981, after Petitioner was informed of the provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County (Indiana) to stand trial on two counts of dealing in marijuana, class D felonies. (R. 559; 567).

On July 21, 1981, Petitioner was returned to Howard County (Indiana). (R. 556; 1132). After his return to Howard County, Petitioner discovered for the first time that the prosecutor intended to also prosecute the Petitioner on three counts of dealing in a schedule IV controlled

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[6] Michigan is a party state to the Interstate Agreement on Detainers and the Agreement is condified in Michigan as Mich. Comp. Laws Annot. §§780.601 to 780.608 (1982)

substance, class C felonies, under Cause Number 424. (R. 524-531). Thereupon, Petitioner made two pro se attempts to introduce into evidence with the trial court the Interstate Agreement on Detainers' forms to show the court that he had agreed to voluntarily return to Indiana for the sole purpose of reaching a final disposition, at the prosecutor's request, on two counts of dealing in marijuana under Cause Number 470. (R. 535; 546).

Subsequently thereto, Petitioner retained private counsel and on January 18, 1982, filed a timely motion to dismiss the charges in Cause Number 424.[2/] It was in the motion to dismiss that Petitioner first raised the question sought to be reviewed in this proceeding. Petitioner contended that the charges in Cause Number 424 should be dismissed because the Howard County (Indiana) prosecutor sought to prosecute him on criminal charges for which no detainer had been lodged against him and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer for which temporary custody of the Petitioner was sought and granted from Michigan authorities under Cause Number 470. (R. 210-216.)

The trial court held a hearing on Petitioner's motion to dismiss on January 25, 1982, at which time evidence was submitted to show that Petitioner had not been notified of the prosecution's intent to try him on the charges under Cause Number 424 and that if he had known of this intention he would not have voluntarily agreed to the return but, instead, would have invoked his right to a pre-transfer hearing to contest his return, as guaranteed him under

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2/ The motion to dismiss is attached hereto as Appendix D.

Article IV(d) of the Insterstate Agreement on Detainers. (R. 561-582). On January 26, 1982, the trial court denied Petitioner's motion to dismiss without comment or written opinion. (R. 219).

On May 11, 1982, Petitioner's jury trial began. At the outset of the jury trial, Petitioner renewed his motion to dismiss and again the motion was denied without comment or written opinion. (R. 228). The jury trial proceeded, and on May 17, 1982, Petitioner was adjudged guilty by the jury on all three counts of dealing in a schedule IV controlled substance under Cause Number 424. (R. 264-267). Consequently, on June 8, 1982, Petitioner was sentenced to prison for a period of five years on each count, to be serve concurrently with one another, but consecutive to the sentences he received for the two counts of dealing in marijuana under Cause Number 470.[8/]

On August 10, 1982, Petitioner then filed a timely motion to correct errors in which he alleged, inter alia, that the trial court had committed error in overruling his pretrial motion to dismiss. (R. 433-436). The trial court denied Petitioner's timely filed motion to correct errors, without written opinion, on October 26, 1982. (R. 445).

Following the denial of Petitioner's motion to correct errors, Petitioner pursued a timely pro se appeal to the Court of Appeals of Indiana. In his direct appeal, Petitioner argued, inter alia, that the trial court had committed error in overruling his pretrial motion to

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8/ Petitioner pleaded guilty to the two counts of dealing in marijuana under Cause Number 470. These are the charges for which a detainer had been lodged against the Petitioner and his return from the Michigan State Prison had been effectuated by the Howard County (Indiana) prosecutor. These convictions are not at issue here.

dismiss. (See: Brief of the Appellant, filed in the Indiana Court of Appeals under Cause Number PS 518, pp. 49-56). While the Indiana Court of Appeals did find that Petitioner's presence in Indiana on Cause Number 424 for the three counts of dealing in a schedule IV controlled substance had been secured outside the terms of the Interstate Agreement on Detainers (App., at A-7),[2/] relying upon this Court's holdings in Ker v. Illinois, 119 U.S. 436 and Frisbie v. Collins, 342 U.S. 519, the Indiana Court of Appeals affirmed the trial court's denial of Petitioner's pretrial motion to dismiss on the basis that jurisdiction over Petitioner's "person was not defeated by the manner in which he was brought before the court to stand trial on the charges in Cause 424." (App., at A-9).

The federal question presented herein was timely raised at each stage of the state court proceedings; therefore, this Court has jurisdiction to review the judgment on a writ of certiorari.

REASON FOR GRANTING THE WRIT

ARTICLE V, SUBSECTION (d), OF THE INTERSTATE AGREEMENT ON DETAINERS LIMITS THE PROSECUTION OF A CRIMINAL DEFENDANT, WHOM HAS BEEN DELIVERED INTO TEMPORARY CUSTODY OF A DEMANING PARTY STATE PURSUANT TO ARTICLE IV OF THE AGREEMENT, TO ONLY BEING PROSECUTED ON CHARGES WHICH FORM THE BASIS OF THE DETAINER OR ARISE OUT OF THE SAME TRANSACTION AS DID THE CHARGES UPON WHICH THE DETAINER WAS BASED AND FOR WHICH TEMPORARY CUSTODY WAS GRANTED, A REQUIREMENT IN FEDERAL LAW THAT DID NOT EXIST AT THE TIME THIS COURT DECIDED KER v. ILLINOIS AND FRISBIE v. COLLINS.

This petition raises an interesting and important question of federal law, which has not heretofore been answered by this Court, viz:

2/ The abbreviation "(App., at A-___)" refers to the Appendix attached hereto.

> Does a state court have jurisdiction to try a defendant in direct violation of Article V, Subsection (d), of the Interstate Agreement on Detainers for crimes which were not contained in the untried informations, and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer used by state prosecuting authorities to obtain temporary custody of the defendant, under Article IV of the Interstate Agreement on Detainers?

Petitioner represents that under the unique circumstances of this case, and in light of the importance of the federal question raised herein to both criminal defendants and prosecuting authorities, this Court should invoke its judicial discretion and review the Indiana Court of Appeals' answer to the question given below. Rule 17.1(c) of the United States Supreme Court.

The question raised in this petition was one of first impression in the State of Indiana. (App., at A- 8). While it is true that the question has been raised by criminal defendants in other states,[10] diligent research has failed to reveal any truly factually similar cases wherein the question raised in this case has been squarely addressed by any court. [11] Research has not disclosed

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10/ In its opinion (App., at A-), the Indiana Court of appeals cited several cases which purportedly have factual situation similar to that of this Petitioner, e.g. Saunderr v. State, (1978) Del. 397 A.2d 548; State v. Casuso, (1977) Iowa, 253 N.W.2d 919; People v. Browning, (1981) 108 Mich. App. 281, 310 N.W.2d 365; Commonwealth v. Frison, (1981) 301 Pa.Super. 498, 448 A.2d 18; State v. Tyson, (1980) Tenn.Crim.App., 603 S.W.2d 748; Bokemeyer v. State, (1981) Tex.Crim.App., 624 S.W.2d 909; and, Brown v. District Court, (1977) 194 Col. 1225, 571 P.2d 1091. However, a review of these cases show that the same question as is raised herein was raised only in State v. Casus, People v. Browning, State v. Tyson, Bokemeyer v. State, and Brown v. District Court.

11/ In State v. Casuso the defendant was tried for additional crimes he committed while in temporary custody under the Interstate Agreement on Detainers. In People v. Browning,

(Footnote continued on next page)

any case in which a federal court has passed upon the question sought to be reviewed in this proceeding. Thus not only is the question raised in this petition one of first impression for this Court, as it was for the Indiana Court of Appeals, but also there is a dire need for this Court to answer the question in order to resolve the controversy and to set forth guidelines to be followed by the nation's lower courts in dealing with the question when it arises in future cases.

In the case of Cuyler v. Adams, 449 U.S. 443, 101 S.Ct. 703, 66 L.Ed.2d 641, this Court held that interpretation of the Interstate Agreement on Detainers presents a question of federal law and that Article IX of the Agreement requires the courts to give liberal construction to the Agreement in order to effectuate the purpose of the Act, that is: "to protect prisoners against whom detainers are outstanding." Id., at 101 S.Ct. 712. In Cuyler v. Adams this Court clearly

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FOOTNOTE NUMBER 11 CONTINUED:

the Michigan Court of Appeals held that the defendant in that case waived the issue by not properly preserving the question raised in the lower court on appeal. However, although the Court did not address the question in Browning, there is dictum in that case to indicate that the court may have ruled that a violation of Article V(d) of the Agreement required dismissal of the criminal charges in a case, such as here, where the question has been properly preserved for appeallate review. 306 N.W.2d at 333-334. In State v. Tyson, the court held that since the questioned criminal charge involved a habitual offender sentence and was based upon the crime for which the defendant was given into temporary custody, it arose out of the same transaction and there was no violation of Article V(d). In Bokemeyer v. State, the question charge involved a re-indictment on the same charge for which the defendant was given into temporary custody. The Texas Criminal Court of Appeals refused to hold that Article V(d) of the Agreement prevented a defendant from being tried upon a re-indictment for the same crime which he was given into temporary custody. Finally, in Brown v. District Court, the questioned charges involved criminal cases which were pending in another county within the state in which the defendant was given into temporary custody. The original county, into whose custody the defendant was given, had properly followed the requirements of the Interstate Agreement on Detainers. The Colorado Supreme Court held that Article V(D) of the Agreement does not require every county in a demanding state, desiring to prosecute a defendant, to comply separately with the provisions of the Interstate Agreement on Detainers. The court in Brown v.

(Footnote continued on next page)

distinguished temporary custody situations under Articles III and IV of the Agreement by noting that those prisoners whom initiate their own transfers under Article III waive various procedural rights guaranteed to them while prisoners who are transferred pursuant to Article IV, do not.[12/] The specific right involved in Cuyler v. Adams was the right of a prisoner who had been transferred pursuant to Article IV of the Agreement to have a pre-transfer hearing in order to contest his delivery into temporary custody of a demanding party state. This Court held, inter alia, that ". . .we conclude as a matter of federal law that prisoners transferred pursuant to the provisions of the Agreement are not required to forfeit any pre-exisiting rights they may have under state or federal law to challenge their transfer to the receiving state. . ." Id., at 101 S.Ct. 712. While this Court did not address the specific provisions involved in the case at bar of the Interstate Agreement on Detainers in Cuyler v. Adams, the Court did establish several factors which are relevant here. First, the Court made it clear that interpretation of the Agreement is a matter of federal law. Secondly, the Court established that the Agreement was to be given liberal construction in favor of the protection of prisoners against whom detainers have been lodged. And,

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FOOTNOTE NUMBER 11 CONTINUED:

District Court adopted the position that the Interstate Agreement on Detainers was "generally designed to benefit the states, not the prisoners." 571 P.2d 1093. None of these circumstances are present here and the specific question was timely raised at all levels of the state court proceedings in this case.

12/ The Petitioner in this case was transferred into temporary custody pursuant to Article IV of the Agreement upon the initiative and request of the Howard County (Indiana) prosecutor.

lastly, that prisoners cannot be compelled to unwittingly forfeit any procedural rights granted to them under either state or federal law to challenge their transfer to the receiving state.

The relevant portion of the Interstate Agreement on Detainers in the case at bar is Article V, subsection (d), and provides as follows:

> The temporary custody referred to in this agreement shall only be for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any **other charge arising out of the same** transaction. Except for his attendance in court and while being transported to or from any place at which his presence may be required, the prisone shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution. 18 U.S.C.App., West's United States Code Annotated; I.C. 35-2.1-2-4, West's Annotated Indiana Code.

In the present case, the Indiana Court of Appeals correctly found that Petitioner's presence in Howard County (Indiana) on the three counts of dealing in a schedule IV controlled substance, under Cause Number 424, had been secured outside the terms of the Interstate Agreement on Detainers. (App., at A-7). However, the Indiana Court of Appeals' legal conclusion that the trial court did not commit error by overruling Petitioner's pretrial motion to dismiss, although Petitioner's return had been obtained in violation of Article V(d) of the Agreement, because jurisdiction over the Petitioner's "person was not defeated by the manner in which he was brought before the court to stan trial on the charges in Cause 424," is erroneous.

The Indiana Court of Appeals' legal conclusion was based upon this Court's holdings in Ker v. Illinois, 119 U.S. 436 and Frisbie v. Collins, 342 U.S. 519. Essentially, in those case this Court held that the power of a court to try a person for a crime is not impaired by the fact that he has been brought within the court's jurisdiction by way of

forcible abduction. Research reveals that this rule was first enunciated in 1886 in Ker v. Illinois and that the last time this Court has actually reexamined the rule was in 1952 when, in Frisbie v. Collins, the Court granted certiorari to determine whether the Federal Kidnaping Act (47 St. 326, as amended 18 U.S.C. §1201) had changed the rule.[13/] During the Court's reexamination of the rule in Frisbie v. Collins, 72 S.Ct. 511-512, 342 U.S. 522-523, this Court observed:

> This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444, 7 S.Ct. 225, 239, 30 L.Ed. 421, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a "forcible abduction." No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisdfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a cou to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.
>
> Despite our prior decisions, the Court of Appeals, relying on the Federal Kidnaping Act, held that respondent was entitled to the writ if he could

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13/ The Court has, however, more recently relied upon the rule in a variety of contexts, e.g., Gernstein v. Pugh, 420 U.S. 1 95 S.Ct, 854, 43 L.Ed.2d 54 (1975) (question was whether a person arrested and held for trial under a prosecutor's information is constitutionally entitled to a judicial determination of probable cause for pretrial restraint of liberty); Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) (question was whether a federal court should consider, in ruling on a petition for federal habeas corpus relief filed by a state prisoner, a claim that evidence obtained by an unconstitutional search and seizure was introduced at his trial, when he has previosuly been afforded an opportunity for full and fair litigation of his claim in the state courts); Rose v. Mitchell, 443 U.S. 545, 99 S.Ct. 2993, 61 L.Ed.2d 739 (1979) (question was whether a federal court, as a matter of policy, should hear claims in a fede al habeas corpus proceeding of racial discrimination in the selection of a grand jury foreman in light of Stone v. Powell); and United States v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980) (question was whether, under the circumstances of that case, an in-court identification of the accused by the victim should be suppressed as the fruit of the defendent's unlawful [illegible]est).

> prove the facts he alleged. The Court thought that to hold otherwise after the passage of the Kidnaping Act "would in practicle effect lend encouragement to the commission of criminal acts by those sworn to enforce the law. (189 F.2d 468) In considering the law of our prior cases has been changed by the Federal Kidnaping Act, we assume, without intimating that it is so, that the Michigan officers would have violated it if the facts are as alleged. This Act prescribes in some detail the severe sanctions Congress wanted it to have. Persons who have violated it can be imprisoned for a term of years or for life; under some circumstances violators can be given the death sentence. We think the Act cannot fairly be construed so as to add to the list of sanctions detailed a sanction barring a state from prosecuting persons wrongfully brought to it by its officers. It may be that Congress could add such a sanction. We cannot.

Petitioner represents that Congress, by including Article V(d) in the Interstate Agreement on Detainers, sought to change the above antiquated rule to comport with the modern trend of our criminal justice system to protect prisoners from the heinous abuses which prevailed during the Ker-Frisbie era. The language in Article V(d) is mandatory, clear, unambiguous, and provides is pertinent part that:

> The temporary custody referred to in this agreement shall only be for the purpose of permitting prosecution on the charge or charges in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. . . (Emphasis Added). 18 U.S.C.App.

The words of Congress in Article V(d) of the Interstate Agreement on Detainers could be paraphrased for the case at bar. Congress could have written:

> If the Howard County (Indiana) prosecuting attorney wants to return Petitioner Ramirez to the State of Indiana, pursuant to Article IV of the Interstate Agreement on Detainers, the prosecutor shall only prosecute Ramirez for the charge or charges contained in the information which forms the basis of the detainer lodged against him with Michigan authorities or for any other crimes arising out of the same transaction as do the crimes which form the basis of the detainer.

By enacting the Interstate Agreement on Detainers, Congress did in fact proscribe that which the Federal Kidnaping Act (18 U.S.C. §1201) did not proscribed during the Frisbie era: Congress limited the prosecution of a criminal defendant, whom is delivered into temporary custody of a party state to the Agreement, to only being prosecuted on crimes named in the charging instrument "which form the basis of the detainer or detainers or. . .on any other charge or charges arising out of the same transaction. If there has ever been an Act passed by Congress which flies directly in face of a rule announced by this Court, it is surely Article V(d) of the Interstate Agreement on Detainers.

The Indiana Court of Appeals found, and the state court record reveals, the crimes involved in this case were not contained in the information which formed the basis of the detainer herein and that the charges did not arise out of the same transaction. Applying the liberal construction required by Article IX of the Agreement and Cuyler v. Adams to Article V(d), the only conclusion that can be reached in this case is that the trial court lacked jurisdiction to try Petition for the crimes in this cause. Since Indiana chose to become a party state to the Interstate Agreement on Detainers, the State is bound by its terms. e.g. Bush v. Muncie, 659 F.2d 402 (4th Cir. 1981), cert. denied, ___U.S.___, 102 S.Ct. 1259, ___L.Ed.2d ___. Article V, Subsection (d) of the Agreement, prohibited the State of Indiana from trying Petitioner for any charge unless ". . . the charge or charges. . .form(ed) the basis of the detainer. . .or for any other charge. . .arising out of the same transaction. . ." The three dealing in a schedule IV controlled substance class C felonies in this cause do not fall within purview of this mandate. It is because of flagrant violation of federal law that this Court should

reexamine the antiquated rule announced in Ker v. Illinois, which was reaffirmed in Frisbie v. Collins, and which was relied upon by the Indiana Court of Appeals to affirm the denial of Petitioner Ramirez's timely filed pretrial motion to dismiss in this case. In the interests of justice, the Court should determine whether Congress has changed the rule by enacting Article V(d) of the Insterstate Agreement on Detainers.

CONCLUSION

For the foregoing reasons, Petitioner Patrick Ramirez respectfully prays that a writ of certiorari issue to review the Judgment of the Indiana Court of Appeals.

Respectfully submitted,

DATED THIS 5th DAY OF July, 1984.

Patrick Ramirez
Petitioner pro se
DOC#24767
Indiana State Farm
P.O. Box 76
Greencastle, Indiana 46135-0076

STATE OF INDIANA)
) SS:
COUNTY OF PUTMAN)

VERIFICATION

I, Patrick Ramirez, who being first duly sworn upon my oath, depose and say that: I am the petitioner in the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS; I have read said petition and affixed my signature thereunto; and, the matters contained therein are true and correct to the best of my knowledge and belief.

Patrick Ramirez
Petitioner pro se

Subscribed and sworn to before me this 5th day of July, 1984.

MY COMMISSION EXPIRES ON:

Oct 26th 1984
Month Day Year

Notary Public

Norman
County of Residence

FOR

[redacted]

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219 State House
Indianapolis, Indiana 46204

IN THE

COURT OF APPEALS OF INDIANA

SECOND DISTRICT

PATRICK RAMIREZ, Appellant (Defendant Below) v. STATE OF INDIANA Appellee (Plaintiff Below)	)	NO. PS 518

APPEAL FROM THE HOWARD SUPERIOR COURT, NO. II
THE HONORABLE CARL E. VAN DORN, JUDGE
CAUSE NO. 424 & 470

SHIELDS, J.

Patrick Ramirez (Ramirez) appeals pro se his convictions under I.C. 35-48-4-3 (Burns Code Ed., Repl. 1979) of dealing in a schedule IV controlled substance. Ramirez raises the following issues:

1) whether the trial court erred in denying his pretrial motion to dismiss the information for failure to comply with the agreement on detainers (Agreement), I.C. 35-2.1-2-4 (Burns Code Ed., Repl. 1979)(repealed 1982); recodified as I.C. 35-33-10-4 (Burns Code Ed., Supp. 1982),
2) whether there was sufficient evidence to support his convictions;
3) whether the trial court committed fundamental error by ordering Ramirez to serve his sentences consecutively; and
4) whether the court erred in calculating his credit time for the days he spent confined awaiting trial sentencing.

On March 20, 1979, Ramirez was charged by information, Cause 424, with three counts of dealing in a schedule IV controlled substance, a class C felony. The incidents on which the charges were based occurred January 28, 1979, March 9, 1979, and March 12, 1979. Then, by a two-count information dated February 6, 1980, Ramirez was charged under Cause 470 with dealing in marijuana, a class D felony,

on December 17, 1979 and December 21, 1979. This appeal concerns Cause 424.

The record reveals Ramirez was serving a sentence in March 1981 in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 62nd Judicial District, Howard County, Indiana mailed the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, requesting the information be filed as a detainer against Ramirez. On June 23, 1981, the prosecutor followed up by mailing an Agreement on Detainers Form V notifying the State Prison of Southern Michigan that Ramirez was charged in Howard Superior Court II with three counts of dealing in marijuana under Cause 424.

The Michigan warden notified Ramirez by Michigan Department of Corrections Agreement on Detainers Form I that an untried Howard County, Indiana information in two counts of dealing in marijuana had been brought to his attention by the Indiana prosecutor. After he was informed of the provisions of the interstate agreement on detainers, Ramirez signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana.

I.

Ramirez' first issue presents two questions: 1) whether his presence in Indiana was obtained under the Agreement, I.C. 35-2.1-2-4, on the basis of Cause 424, three counts of dealing

in a controlled substance, and 2) if not, what remedy exists for the State's failure to follow the provisions of the Agreement.

The Agreement is a uniform law enacted by the majority of the states and the federal government.[1/] Its purpose is to encourage the expeditious and orderly disposition of outstanding charges and detainers based on untried indictments and informations against prisoners. I.C. 35-2.1-2-4, Article 1. The Agreement provides a method by which an imprisoned individual may seek final disposition of the charges contained in a detainer filed against him by another jurisdiction. The Agreement also provides a method by which other jurisdictions may gain temporary custody of a prisoner to try him on outstanding charges for which a detainer has been filed.

The State's interest protected by the Agreement, having a simplified procedure for gaining temporary custody of defendants imprisoned in other jurisdictions, is obvious. The Agreement, however, also protects the interests of imprisoned defendants in "removing the difficulties in securing speedy trials" and removing "the uncertainties which obstruct programs of prisoner treatment and rehabilitation" when a prisoner's status is clouded by the existence of untried charges on which detainers have been lodged. I.C. 35-2.1-2-4, Article 1.

1/ The Agreement is codified in Michigan as Mich. Comp. Laws Annot. § 780.601 to .608 (1982).

Pursuant to the Agreement, after a detainer is filed,[2/] the jurisdiction which filed it may present a written request for temporary custody of the prisoner to appropriate authorities of the state in which the individual is incarcerated. The Agreement provides a thirty-day period shall pass after receipt of the request before the request may be honored. The Agreement further provides,

> "[T]he appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor withing thirty [30] days, and to contest the legality of his delivery."

I.C. 35-2.1-2-4, Article 9(7).

By mandate of the United States Supreme Court, unless waived, the imprisoned defendant must be afforded an extradition-type hearing before the request for temporary custody is honored. Cuyler v. Adams, (1981) 449 U.S. 433. Further, upon request of the state in which the individual is incarcerated, the state requesting temporary custody is required to present a certified copy of the indictment, information, or complaint which forms

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2/ "Detainer" is not defined by the Agreement. However, a detainer has been described as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." Webb v. State, (1982) Ind., 437 N.E.2d 1330, 1331 (quoting S.Rep.No. 21-1356, 91st Cong., 2d Sess. 2 (1970)).

the basis of the detainer. I.C. 35-2.1-2-4, Article 5(2).

The State contends Ramirez' presence in Indiana was secured under the Agreement on both Cause 424, three counts of dealing in a schedule IV controlled substance and Cause 470, two counts of dealing in marijuana. We disagree.

The certified copy of the two-count information in Cause 470 transmitted to the Michigan authorities was undoubtedly sufficient to serve as a detainer as to that cause. The controversy involves the document subsequently transmitted which incorrectly described the outstanding charge as a three-count information for dealing in marijuana under Cause 424. This document was apparently understood by Michigan authorities to refer to the two-count dealing in marijuana information transmitted earlier. The record shows Ramirez was informed in writing of the following outstanding information against him: "Howard County, Indiana - two counts of delivery of marijuana; bench warrant." Record at 559. Further, there is evidence the Michigan authorities verbally informed Ramirez his return to Indiana was requested to stand trial on charges of dealing in Marijuana, a class D felony.

Based on this evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the

terms of the Agreement. The fact the Agreement on Detainers Form V transmitted to Michigan had typed upon it "Cause Number 424" is not sufficient evidence to the contrary.

Ramirez' contention on appeal, as in his motion, is the information in Cause 424 should be dismissed because of the State's violation of the provision of the Agreement providing:

> "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [or] complaints which form the basis of the detainer or detainers or for the prosecution on any other charge or charges arising out of the same transaction."

I.C. 35-2.1-2-4, Article 5(d). Therefore, Ramirez contends, because the State was unable under the Agreement to try him on a charge not forming the basis of a detainer or arising out of the same transaction, the information in Cause 424 must be dismissed and his conviction reversed.

The interpretation of this provision of the Agreement is an issue of first impression in Indiana.[3/] For the purposes

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3/ Ramirez has directed us to, and independent research has revealed, no Indiana cases concerning this particular provision of the Agreement. We do note the presence of Indiana cases holding violations of the Agreement's provisions designed for the protection of the imprisoned defendant are waived unless timely raised at the trial level. Scrivener v. State, (1982) Ind., 441 N.E.2d 954 (speedy trial, Article 3(a);) Webb v. State, (1982) Ind., 437 N.E.2d 1330 (return without trial, Article 4(e)).

Footnote continued on page 8.

of this discussion, we assume, as Ramirez asserts, that the provision was included in the Agreement to protect imprisoned defendants in his position from unwittingly consenting to be returned to another jurisdiction for trial on minor charges only to be tried, once returned, on far more serious outstanding charges.

Nevertheless, there is no merit to Ramirez' argument the information must be dismissed. Jurisdiction over Ramirez' person was not defeated by the manner in which he was brought before the court to stand trial on the charges in Cause 424. The manner in which a defendant is brought before the court has no effect upon the court's jurisdiction over him. As

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Footnote 3 continued.

Our research has uncovered cases in other jurisdictions having factual situations similar to Ramirez'. See Saunders v. State, (1978) Del., 397 A.2d 548; State v. Casuso, (1977) Iowa, 253 N.W.2d 919 (crime committed while in temporary custody under Agreement); People v. Browning, (1981) 108 Mich. App. 281, 310 N.W.2d 365 (waived because not raised before or during trial); Commonwealth v. Frison, (1981) 301 Pa.Super. 498, 448 A.2d 18 (defendant's presence at his request); State v. Tyson, (1980) Tenn. Crim.App., 603 S.W.2d 748 (habitual criminal charge "arising out of same transaction"); Bokemeyer v. State, (1981) Tex.Crim.App., 624 S.W.2d 909 (reindictment of same charge). However, in few cases has the substantive issue been before the court as it is here. See Brown v. District Court, (1977) 194 Col. 1225, 571 P.2d 1091.

stated by the United States Supreme Court in Firsbie v. Collins, (1952) 342 U.S. 519, 522 (footnote omitted).

> "This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases."

We acknowledge one of the purposes of the Agreement, affording imprisoned individuals certain statutory rights, is not served where a jurisdiction prosecutes an individual outside the Agreement. Nevertheless, we fail to see how the other avowed purpose of the Agreement, providing a simplified procedure whereby individuals imprisoned in one jurisdiction may be brought to trial on outstanding charges in another jurisdiction, would be served by dismissing the charge against Ramirez.

Although we do not countenance the State's failure to comply with the provisions of the Agreement as to Cause 424, the State's failure does not warrant dismissal of this case. See Brown v. District Court, (1977) 194 Colo. 1225, 571 P.2d 1091 (detainer). Cf. Martin v. State, (1978) 176 Ind.App. 503, 376 N.E.2d 498 (extradition). This is not to say Ramirez may not have a remedy for the State's failure to file a detainer against him on Cause 424 before trying him in that cause. However, dismissal of the information is not the remedy. The trial court did not commit error in denying his motion to dismiss.

II

Ramirez, having raised at trial the defense of entrapment under I.C. 35-41-3-9 (Burns Code Ed., Repl. 1979), challenges the sufficiency of the evidence showing his predisposition to commit the crime. When the defense of entrapment is raised, the State must prove 1) the prohibited conduct was not the product of the persuasive efforts of law enforcement officials or 2) regardless of law enforcement efforts, the accused was predisposed to engage in the conduct. Marts v. State, (1982) Ind., 432 N.E.2d 18.

The question of predisposition, one of subjective intent, is for the trier of fact. Voirel v. State, (1980) Ind.App., 412 N.E.2d 861. Our standard of review of sufficiency of the evidence to support a finding of predisposition, as on all sufficiency of the evidence questions, is clear. We will not weigh conflicting evidence nor judge the credibility of the witnesses. Rather, we will look to the evidence most favorable to the State, together with all reasonable inferences which may be drawn therefrom. If there is evidence of probative value to support the decision of the fact finder, the conviction will not be disturbed. Everroad v. State, (1982) Ind., 442 N.E.2d 994. Predisposition may be established by circumstantial evidence. Voirol v. State, 412 N.E.2d at 863.

Here, the evidence reveals a Kokomo police informant, Bruce Hamlin (Hamlin), was approached by Ramirez in January

1979 during Hamlin's employment as a courthouse janitor. Ramirez inquired if Hamlin would be interested in selling some controlled substances for him. Subsequently, on January 28, 1979, at Hamlin's residence, Ramirez sold Hamlin a number of tablets later determined to contain diazepam and phenobarbitol. This buy was not controlled by law enforcement officers and Hamlin paid for the drugs with his own money. He was later reimbursed when he turned the tablets over to the police.

On March 9, 1979, Hamlin, who had been searched and wired for sound by the police, purchased fifty (50) methaqualone, diazepam, and phenobarbital tablets from Ramirez. The police monitored this purchase. No money passed to Ramirez at this time because the transaction was a "front" deal with payment to be made at a later date. On March 12, 1979, again searched and wired for sound, Hamlin paid Ramirez $100 owed for the tablets received on March 9.

Later in the day on March 12, 1979, Hamlin, again searched and wired for sound, purchased an additional fifty tablets containing methaqualone, diazepam, and phenobarbital from Ramirez. The deal was again "fronted" and the tablets were not paid for by Hamlin until March 20, 1979. When Ramirez was arrested pursuant to warrant on March 20, 1979, he was

found in possession of five of the $20 bills the police had given Hamlin to pay for the tablets received from Ramirez on March 12, 1979.

Ramirez contends that because he was not found to possess any additional controlled substances at his arrest and because the evidence shows Hamlin instigated the purchases on January 28, 1979, March 9, 1979, and March 12, 1979, his conviction must be reversed. Ramirez contends he was not predisposed to sell the controlled substance and was thus entrapped as a matter of law. Ramirez is incorrect.

Although the actual purchases were instigated by Hamlin, the evidence shows it was Ramirez who, unsolicited, first approached Hamlin with the suggestion Hamlin sell drugs which Ramirez would supply. Further, the evidence shows not an isolated sale, but a series of transactions in controlled substances between Ramirez and Hamlin. This evidence, albeit circumstantial, is sufficient to support the jury's determination Ramirez was predisposed to sell a schedule IV controlled substance.[4/] See Silva v. State, (1980) Ind.App., 410 N.E.2d 1342 (multiple sales to officers as one circumstance tending to show predisposition).

Ramirez also argues Hamlin's testimony was inherently unbelievable because he was a police informant against whom

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4/ The record also contains testimony of another individual to whom Ramirez had been selling schedule IV controlled substances shortly before Ramirez's arrest in March 1979. Ramirez had also inquired whether this individual "could get rid of some of them," i.e., sell some of the substances, for Ramirez. Record at 917.

charges were pending at the time of the transactions with Ramirez. We disagree. Hamlin's veracity was certainly open to question. However, the record shows the jury was made aware of his criminal history and the possibility of benefits flowing to him in exchange for information he provided and his testimony. The jury, who was in a better position than we to pass upon his credibility, apparently chose to believe Hamlin. We cannot say no reasonable person would have reached that conclusion. Bentley v. State, (1981) Ind., 414 N.E.2d 573.

III.

Ramirez contends the trial court erred in ordering his sentence for dealing in a schedule IV controlled substance, Cause 424, and his sentence for dealing in marijuana, Cause 470, to be served consecutively. Having failed to object at the sentencing hearing or to raise the issue in his motion to correct errors, Ramirez necessarily claims this sentencing error is fundamental error.

I.C. 35-50-1-2 (Burns Code Ed., Repl. 1979) provides:

> "(a) Except as provided in subsection (b) of this section, the court shall determine whether terms of imprisonment shall be served concurrently or consecutively.
> (b) If a person commits a crime:
> (1) After having been arrested for another crime; and
> (2) Before the date he is discharged from probation, parole, or a term of imprisonment imposed for that other crime;
> the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed."

Ramirez' argument is twofold. He first contends he was improperly sentenced under I.C. 35-50-1-2(b), the subsection making consecutive sentencing mandatory in certain enumerated situations. He argues his situation does not fall within subsection (b) of the statute with the result his sentence was outside the scope of statutory authority and therefore was fundamental error. We agree with Ramirez that sentencing without statutory authority produces fundamental error. See Rihl v. State, (1980) Ind.App., 413 N.E.2d 1046 (prior law vesting authority in trial judge to impose consecutive sentences only where statutorily authorized).

The record of the sentencing hearing shows the sentences for the two crimes were pronounced at the same time. The record further shows the trial judge did not disclose his reasons for imposing consecutive terms. However, Ramirez admits in his brief he was free on bond on Cause 424 when he committed the crime charged in Cause 470, dealing in marijuana.

Ramirez argues that I.C. 35-50-1-2(b) requires mandatory consecutive sentences only where a defendant is on parole, probation or serving a term of imprisonment at the time he commits a second offense. Therefore, because he was out on bond and not on probation or imprisoned, Ramirez argues subsection (b) is inapplicable to him.

Initially, we note the statutory language does not require a defendant to be "on" parole, probation or serving

a term of imprisonment. Rather, the statutory language speaks of a person who commits a crime during the time period 1) after he is arrested for another crime, and 2) before he is discharged from probation, parole or imprisonment for that other crime. If the legislature had intended the circumstances under which consecutive sentences are mandatory to be limited to the time a defendant is on parole, probation, or imprisoned, it is not readily apparent why it included the "after having been arrested" language.

Ramirez directs our attention to the predecessor statute, I.C. 35-8-7.5-1 (Burns Code Ed., Supp. 1977), which specifically addressed the issue of a defendant who committed a crime while released on bond on a previous charge. Ramirez argues the repeal of this statute and the substitution of I.C. 35-50-1-2(b) evidences the legislative intent to exclude commission of a crime while out on bond as an instance where consecutive sentences are mandatory. We disagree. See Governor's Conference on the Indiana Penal Code (1977) at 142 (interpreting I.C. 35-50-1-2 as follows: "The court may impose consecutive sentences if a person commits a second crime while released on bail, probation, or parole, or while confined or an escapee from confinement. Otherwise, the court has discretion as to whether to impose consecutive or concurrent sentences for 2 or more crimes.") See also Chandler v. State, (July 26, 1983) Ind. No. 1182 S 430 (crime committed while escaped from incarceration; concurrent sentences reversed because consecutive sentences mandatory). Contra Garrett v. State, (1980) Ind.App., 411

N.E.2d 692 (escape).

Ramirez cites Haggard v. State, (1983) Ind., 445 N.E.2d 969, to support his view. Although at first blush some of the language appears to support his position, a careful reading of Haggard reveals the Supreme Court was not interpreting I.C. 35-50-1-2(b) but was simply holding the fact scenario in Haggard rendered the mandatory provision of the statute inapplicable.[5/] Thus, in imposing consecutive sentences in Haggard, the trial court was operating at its discretion as authorized by I.C. 35-50-1-2(a), not by law as provided in I.C. 35-50-1-2(b).

However, even assuming Ramirez is correct in his contention his situation does not fall within subsection (b) of the statute mandating consecutive sentences, the trial judge was not without authority to order consecutive sentences in this case. Subsection (a) of I.C. 35-50-1-2 endows a trial court judge with discretion in ordering consecutive or concurrent sentences in all situations not enumerated in subsection (b).

Thus, Ramirez' second argument, that the judge committed fundamental error in failing to articulate his reasons for imposing the consecutive sentences, is a contention the trial judge abused his statutory discretion. Although such an abuse of judicial discretion is erroneous, see Brown v. State, (1982) Ind., 442 N.E.2d 1109; Taylor v. State, (1982) Ind.,

5/ In Haggard v. State, (1983) Ind., 445 N.E.2d 969, the trial court ordered the defendant's commitment to be served consecutively to a commitment for offenses in another county. However, the crimes which resulted in the two commitments were all part of the same transaction. Therefore, factually, I.C. 35-50-1-2(b) Burns Code Ed., Repl. 1979) was inapplicable because an arrest did not intervene between the series of offenses that resulted in the two commitments.

442 N.E.2d 1087, it does not rise to that level of errors deemed to be fundamental. Therefore, having failed to raise this error at the appropriate time, Ramirez has waived it.[6/]

IV.

Ramirez' final contention is the trial court erred in failing to grant him 322 days credit time for the time he spent in the Howard County, Indiana jail awaiting trial and sentencing in Cause 424 and Cause 470. The 322 days represent the time between the date of his return to Indiana from his incarceration in Michigan and the date of his sentencing in Cause 424 and Cause 470. Citing Burnett v. State, (1982) Ind., 439 N.E.2d 174 and Dolan v. State, (1981) Ind.App., 420 N.E.2d 1364, Ramirez contends the 322 days should be credited to the aggregate of the consecutive sentences he received in Cause 424 and Cause 470.

The State argues because Ramirez apparently received credit against his Michigan sentence for the days he was in

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6/ In any event, reviewing the record we find in the presentence investigation report numerous aggravating circumstances which would justify imposing consecutive sentences. Given the opportunity by advisement in the motion to correct errors, the trial court easily could have provided a statement of aggravating circumstances justifying imposition of consecutive sentences. Thus, according to our Supreme Court in Beasley v. State, (1983) Ind., 445 N.E.2d 1372, the error alleged by Ramirez is not fundamental (inadequate statement of aggravating circumstances to enhance sentence).

the Howard County Jail awaiting trial and sentencing on the Indiana drug charges,[1] he is not entitled to also receive credit time for those days in Indiana. The State is incorrect. There is no indication the sentences in Cause 424 and Cause 470 were to run consecutively to the Michigan sentence. Because the Michigan and Indiana sentences must therefore be assumed to be concurrent, it would appear Ramirez was entitled to have the 322 days credited to both his Michigan sentence and to the aggregate of the two Indiana sentences. See Simms v. State, (1981) Ind.App., 421 N.E.2d 698; Dolan v. State, 420 N.E.2d 1364 (interpreting I.C. 35-30-6-3 (Burns Code Ed. Repl. 1979)).

However, our review of the record of the proceedings has apprised us the credit time situation is more complicated than the parties' arguments have made it appear. Although not discussed by the parties, the record reveals that in calculating Ramirez' credit time the trial court considered a third Indiana sentence, one arising as a result of a conviction of theft under

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1/ The Agreement on Detainers, I.C. 35-2.1-2-4, Article 5(f) provides that when a prisoner is in the temporary custody of a requesting state, time being served on the prisoner's sentence in the sending state shall continue to run.

Cause 427. It appears from the dialogue between the trial judge and Ramirez' attorney at the sentencing hearing that the 322 days were to be credited to Ramirez' theft sentence. Record at 1038. However, there is nothing in the record presented us to indicate the 322 days actually were credited to the theft sentence or to indicate whether the theft sentence was to be served consecutively or concurrently with the drug sentences. Therefore, although the law favors Ramirez' position, we lack sufficient factual data to enable us to apply the law.

Thus, we remand to the trial court with instructions to conduct a hearing to recalculate Ramirez' credit time as applicable to Cause 427 (theft) as well as to Cause 424 and Cause 470 (drug charges).[8/] In all other respects, the trial court's decision is affirmed.

Buchanan, C. J., concurs.

Sullivan, J., concurs.

8/ The trial court's reconsideration on remand should include an additional factor. Ramirez argues his bail bond in Cause 424 was released two days after his return to Indiana from Michigan. Thus, he contends, there is no doubt his presence in the Howard County Jail was "as a result of" the charges pending in Cause 424. The record presented us in Cause 424 does indeed indicate a bond was released, but the bond is described as an "appeal" bond. Record at 6, 160. Further, the record of the sentencing hearing indicates the bond released was the appeal bond issued in the theft case, Cause 427. The status of bond, if any, in Cause 424 and Cause 470, is not clear from the record. Because the bond status may affect the credit time calculation, see DeWees v. State, (1983) Ind.App., 444 N.E.2d 332, the trial court's reconsideration on remand should include this issue.

APPENDIX "C"

STATE of INDIANA

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
MARJORIE H. O'LAUGHLIN, CLERK
217 STATE HOUSE

INDIANAPOLIS, 46204

TELEPHONE 633-1930

No. PS 518

Patrick Ramirez V. State of Indiana

You are hereby notified that the Supreme Court

has on this day Appellants petition to Transfer is hereby Denied, DeBruler, A.C.J. Without Opinion.
All Justices Concur.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 11 day of May, 1984.

Marjorie H. O'Laughlin
Clerk Supreme Court and Court of Appeals

5/11/84 ʃ TD

No. PS 518

Patrick Ramirez, Greencastle
Linley E.Pearson,Atty.Genl.

I hereby acknowledge receipt

of the above notice

Signature

Date ____, 19____

Attorney for ☐ Appellant
☐ Appellee

A-22

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APPENDIX "A"

STATE OF INDIANA

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
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237 STATE HOUSE

INDIANAPOLIS, 46204

TELEPHONE 232-1930

No. 75 S12

Patrick Ramirez v. State of Indiana

You are hereby notified that the Court of Appeal has on this day Issued the enclosed Opinion.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 7th day of Dec. 19 75

Marjorie N. O'Laughlin
Clerk Supreme Court and Court of Appeals

10/26/53 j- DP

No. 75 S12

Patrick Ramirez, Pres Castle
Linley E. Pearson, Atty. Gen.

I hereby acknowledge receipt of the above notice

_____, 19___

Attorney For _____

Return This Portion

84-5059

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, ex rel., PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

CAUSE NO. _____

AFFIDAVIT OF MAILING AND CERTIFICATE OF SERVICE

I, Patrick Ramirez, who being first duly sworn upon my oath, depose and say that on this 5th day of July, 1984, I served a true and correct xerox copy of the following-listed documents, by first-class, postage prepaid, first-class, United States Mail, upon the Honorable Linley Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana 46204:

(a) Motion for Leave to Proceed in Forma Pauperis and Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis;

(b) Motion for Appointment of Counsel;

(c) Petition for A Writ of Ceritorari to the Indiana Court of Appeals and Appendix; and,

(d) Affidavit of Mailing and Certificate of Service.

I further state that on the above-mentioned date, I filed one origina type written copy of each document listed above with the Clerk of the United States Supreme Court, via certified, postage prepaid, return-receipt requested, United States Mail.

Patrick Ramirez
Petitioner pro se

Subscribed and sworn to before me this 5 day of July, 1984.

Notary Public

MY COMMISSION EXPIRES ON:

Oct 26th 1984
Month Day Year

County of Residence

ORIGINAL

Supreme Court, U.S.
FILED
OCT 4 1984
ALEXANDER L. STEVAS
CLERK

No. 84-5059

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON APPEAL FROM THE SUPREME
COURT OF INDIANA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

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QUESTION PRESENTED FOR REVIEW

Whether an accused, imprisoned in a penal institution of another state and who has a detainer lodged against him for a criminal charge pending in the State of Indiana, is entitled to dismissal of the charge when the authorities of the retaining institution fail to inform him, in writing, of the existence, source, and contents of the detainer pursuant to the Interstate Agreement on Detainers, Article 9(7), IC § 35-2.1-2-4 (Burns Repl. 1979)?

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No. 84-5059

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, the State of Indiana, respectfully requests that the Court deny the issuance of a Writ of Certiorari directed to the Supreme Court of Indiana and, thereby, refuse to review the decision of that court and the Court of Appeals of Indiana in Cause Number PS518.

OPINION BELOW

The Court of Appeals of Indiana entered an opinion in this cause on October 26, 1983. The opinion is set forth in the Petitioner's Appendix at A-1 and is officially reported at 455 N.E.2d 609. A petition for rehearing was filed and was denied by the Court of Appeals of Indiana on February 1, 1984.

A petition for transfer was filed and was denied by the Supreme Court of Indiana on May 11, 1984. Petitioner's Appendix at A-22.

STATEMENT OF THE CASE

On March 20, 1979, the Petitioner was charged by information, (Cause 424), with three counts of dealing in a schedule IV controlled substance, a class C felony. Later, on February 6, 1980, the Petitioner was charged by information, (Cause 470), with two counts of dealing in marijuana.

In March, 1981, the Petitioner was serving a sentence in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 62nd Judicial District, Howard County, Indiana, mailed to the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, and requested that the information be filed as a detainer against the Petitioner. On June 23, 1981, the prosecuting attorney mailed an Agreement on Detainers, Form V, which notified the State Prison of Southern Michigan that the Petitioner was also charged with three counts of dealing in marijuana under Cause 424.

By means of the Michigan Department of Corrections Agreement on Detainers Form I, the Michigan warden notified the Petitioner that an information (Cause 470) alleging two counts of dealing in marijuana had been filed against him by the Indiana prosecutor. After the Petitioner was informed of the

provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana (Cause 470). The Petitioner's appeal concerns Cause 424.

SUMMARY OF THE ARGUMENT

The purpose of the Interstate Agreement on Detainers is to avoid difficulties often encountered in interstate proceedings by providing an expeditious, simplified method of disposing outstanding criminal charges pending in one state against a person imprisoned in another. In this case, although a provision of the Agreement, IC § 35-2.1-2-4, Article 9(7), was violated, it is well settled that a nonjurisdictional error in the proceedings by which a person is brought to trial does not deprive a court of jurisdiction. Further, the policies of the Agreement were served, in the case at bar, by the expeditious and orderly disposition of the Petitioner's charge. Thus, since the Petition for Writ of Certiorari fails to raise a substantial federal question, the petition does not warrant further review.

ARGUMENT

The Interstate Agreement on Detainers, IC § 35-2.1-2-4 (Burns Repl. 1979) (hereinafter, Agreement), is a uniform law enacted by the majority of the states and the federal government. The Agreement is an interstate compact sanctioned by

Congress under Art. I, §10, cl. 3 of the United States Constitution. The construction of such a compact presents a question of federal law and involves federal rights. Petty v. Tennessee-Missouri Bridge Commission, (1959) 359 U.S. 275, 79 S.Ct. 785. The purpose of the Agreement is to encourage the expeditious and orderly disposition of outstanding charges and detainers based on untried indictments and informations against prisoners. IC § 35-2.1-2-4, Article 1. The Agreement provides a method by which an imprisoned individual may seek final disposition of the charges contained in a detainer filed against him by another jurisdiction. The Agreement also sets forth a means by which other jurisdictions may gain temporary custody of a prisoner to try him on outstanding charges for which a detainer has been filed.

The Agreement contains no definition of a detainer. It has been otherwise defined, however, as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." United States v. Mauro, (1978) 436 U.S. 340, 98 S.Ct. 1834. Pursuant to the Agreement, after a detainer is filed, the jurisdiction which filed it may present a written request for temporary custody of the prisoner to appropriate authorities of the state in which the individual is incarcerated. The Agreement further provides:

> [T]he appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor withing thirty [30] days, and to contest the legality of his delivery.

IC 35-2.1-2-4, Article 9(7). In addition, upon request of the state in which the individual is incarcerated, the state requesting temporary custody is required to present a certified copy of the indictment, information, or complaint which forms the basis of the detainer. IC § 35-2.1-2-4, Article 5(2).

It is clear that the Agreement protects the State's interest in having a simplified procedure for gaining temporary custody of defendants imprisoned in other jurisdictions. However, the Agreement also protects the interests of imprisoned defendants in "removing the difficulties in securing speedy trials" and removing "the uncertainties which obstruct programs of prisoner treatment and rehabilitation" when a prisoner's status is clouded by the existence of untried charges on which detainers have been lodged. IC § 35-2.1-2-4, Article 1. The Agreement is intended to be liberally construed so as to effectuate its purposes. IC § 35-2.1-2-4, Article 9. It is necessary, therefore, to review the instant issue in light of the above-stated provisions and policies of the Agreement.

In this case, on March 20, 1979, the Petitioner was charged by information, (Cause 424), with three counts of dealing in a schedule IV controlled substance, a class C felony. Later, on February 6, 1980, the Petitioner was charged by information, (Cause 470), with two counts of dealing in marijuana.

In March, 1981, the Petitioner was serving a sentence in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 42nd Judicial District, Howard County, Indiana, mailed to the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, and requested that the information be filed as a detainer against the Petitioner. On June 23, 1981, the prosecuting attorney mailed an Agreement on Detainers, Form V, which notified the State Prison of Southern Michigan that the Petitioner was also charged with three counts of dealing in marijuana under Cause 424.

By means of the Michigan Department of Corrections Agreement on Detainers Form I, the Michigan warden notified the Petitioner that an information (Cause 470) alleging two counts of dealing in marijuana had been filed against him by the Indiana prosecutor. After the Petitioner was informed of the provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana (Cause 470).

Based on the foregoing evidence, the Petitioner's presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured in violation of the terms of the Agreement. Consequently, the Petitioner argues that the information in Cause 424 should be dismissed and his conviction reversed because of the State's violation of IC § 35-2.1-2-4, Article 5(d) which provides:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [or] complaints which form the basis of the detainer or detainers or for the prosecution on any other charge or charges arising out of the same transaction.

The Petitioner's argument that the information in Cause 424 must be dismissed not only is without merit, but also misconceives the nature of the provisions of the Agreement. A violation of the Agreement is not recognizable as a claim of lack of subject matter jurisdiction--the power or authority confered upon a court to decide a given type of case. Hagans v. Levine, (1974) 415 U.S. 528, 94 S.Ct. 1372; United States v. Edwards, (2nd Cir. 1977) 564 F.2d 652. It is well settled that irregularity in the proceedings by which a person is brought to trial does not deprive the court of jurisdiction. In Frisbie v. Collins, (1952) 342 U.S. 519, 72 S.Ct. 509, the United States Supreme Court ruled:

> This Court has never departed from the rule announced in Kerr v. Illinois, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases.

Thus, a court which has jurisdiction of the subject matter of a criminal prosecution need not inquire how a defendant was brought before it; his presence in court is sufficient to confer jurisdiction over his person. In the instant case, the Howard County Superior Court derived its power to adjudicate the case against the Petitioner from IC § 33-5-20.1-4 (Burns Supp. 1984) which provides in pertinent part:

> The superior court, within and for the county, shall have original and concurrent jurisdiction with the circuit court in all civil actions and proceedings at law and in equity; probate and guardianship proceedings; actions for divorce, separation, or annulment of marriage; and in all criminal cases and proceedings; Provided, however, That the superior court shall not have the jurisdiction of a juvenile court or judge thereof, as defined by IC 33-12 [33-12-3-1--33-12-3-4].

The court unquestionably had jurisdiction over the offense of dealing in a schedule IV controlled substance for which the Petitioner was convicted.

Moreover, a violation of a statutory provision such as IC § 35-2.1-2-4, Article 9(7) is not sufficiently important to deny a court jurisdiction. It cannot be said that the statutory procedural rules defined in the Agreement, which clearly

do not rise to the level of constitutionally guaranteed rights, are so fundamental as to divest a court of jurisdiction due to a violation of a provision. The protections of the Agreement are neither founded on constitutional rights nor the preservation of a fair trial, but are designed to facilitate a defendant's rehabilitation in prison and to avoid disruptions caused when charges are outstanding against the prisoner in another jurisdiction. Brown v. District Court, (1977) 194 Col. 1225, 571 P.2d 1091. With the purposes of the Agreement in mind, a violation of a statutory provision of the Agreement should not preclude a court from obtaining personal jurisdiction over criminal defendants contrary to the general rule enunciated in Frisbie, supra. To interpret otherwise would frustrate rather than promote the stated policies of the Agreement.

Finally, the Petitioner was given a fair trial and a full opportunity to contest the charge against him. The error asserted here neither affects the truth-seeking process nor does it impinge on any fundamental or constitutionally guaranteed right. If a mechanical application of IC § 35-2.1-2-4, Article 9(7) is considered appropriate, the Agreement could be used, not for the purpose of protecting any legitimate interest a prisoner may have in his rehabilitation, but rather, to secure relief from an otherwise lawful conviction. To so strictly construe the Agreement would make a mockery of the

jury's verdict and serve to undermine the interests of justice. The Agreement was designed to correct untenable abuses by government officials in the use of detainers. This is not to say, however, that the Agreement should be interpreted so as to create a sanctuary on appeal for convicted defendants. The Agreement must be construed soundly.

Accordingly, based on the above analysis, the violation of IC § 35-2.1-2-4, Article 9(7) is a non-jurisdictional error. The policies of the Agreement were served, in this case, by the expeditious and orderly disposition of the Petitioner's charge. The Petitioner is entitled to neither the dismissal of the information on Cause 424 nor the reversal of his conviction.

CONCLUSION

For the foregoing reasons, the Respondent, State of Indiana, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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OCTOBER TERM, 1984

PATRICK RAMIREZ

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Respondent

On Writ Of Certiorari To
The Court Of Appeals Of Indiana

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Did the Indiana state courts have authority to try the petitioner for crimes which were not contained in the untried informations and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer used by state prosecuting authorities to obtain temporary custody of the petitioner under Article 4 of the Interstate Agreement on Detainers?

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OPINIONS AND ORDERS OF THE COURTS BELOW

The opinion of the Court of Appeals of Indiana dated October 26, 1983 is officially reported as *Ramirez* v. *State of Indiana*, 455 N.E.2d 609 (Ind. Ct. App. 1983). It is also printed in the joint appendix. (J.A. 165) The Court subsequently denied a petition for rehearing, without opinion, on February 1, 1984. A timely petition to transfer was denied by the Indiana Supreme Court, without opinion, on May 11, 1984. (J.A. 180)

JURISDICTION

The petition to transfer was denied by the Indiana Supreme Court on May 11, 1984. The *pro se* petition for certiorari was filed on July 13, 1984 and was granted on October 26, 1984. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Art. IV, sec. 2, cl. 2—A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

U.S. Constitution, Art. I, sec. 10, cl. 3—No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Interstate Agreement on Detainers—The text of this interstate compact, as presently codified in the Indiana

Code, is set out in Appendix A of this brief. It is codified at § 35-33-10-4. This is a recodification, without change, of the Agreement at the time of the events in this case; it was then codified at § 35-2.1-2-4. Appendix B.

The Interstate Agreement can also be found at 18 U.S.C. App. 545-48 (1982).

In the Michigan Code, it appears at Mich. Comp. Laws Ann. § 780.601.

In the Uniform Laws Annotated, it can be found at 11 U.L.A. 323 (1974).

STATEMENT OF THE CASE

Introduction

This case involves two "causes" brought against the petitioner by the State of Indiana, Cause 424 (Class C felonies) and Cause 470 (Class D felonies). While the petitioner was incarcerated in Michigan, the State of Indiana sought to obtain jurisdiction over him under the provisions of the Interstate Agreement on Detainers (IAD).[1] The Indiana prosecutor named only Cause 470 in

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[1] *An Overview of the Interstate Agreement on Detainers.*

This Court described the basic procedures under which a prisoner against whom a detainer has been lodged may be transferred to the temporary custody of the receiving State in *Cuyler* v. *Adams*, 449 U.S. 433 (1981). There are two procedures. One may be invoked by the prisoner; the other by the prosecuting attorney of the receiving State:

> *Article III* of the Agreement provides the prisoner-initiated procedure. It requires the warden to notify the prisoner of all outstanding detainers and then to inform him of his right to request final disposition of the criminal charges underlying those detainers. If the prisoner initiates the transfer by demanding disposition (which under the Agreement automatically extends to *all* pending charges in the receiving State), the authorities in the receiving State must bring him to trial within 180 days or the charge will be dismissed with prejudice, absent good cause shown.

the detainer sent to Michigan. Believing that Indiana intended to bring him to trial only on that "cause," the petitioner waived his rights to a pretransfer extradition hearing and voluntarily agreed to be returned to Indiana for trial on Cause 470. However, upon his return to Indiana, the petitioner discovered that the State of Indiana intended to try him on Cause 424 as well. He then made a pretrial motion to dismiss those charges as improperly brought under the provisions of the IAD; the Indiana trial court overruled the motion. The petitioner subsequently moved in the trial court to correct errors. After denial of that motion, he appealed to the Court of Appeals of Indiana which affirmed the judgment of the trial court. He now brings to this Court the question of whether the State of Indiana could try him for charges which were not mentioned in the detainer. The following paragraphs outline in greater detail the early procedural history of the two causes, as well as the proceedings that occurred after the petitioner was returned to Indiana.

Article IV of the Agreement provides the procedure by which the prosecutor in the receiving State may initiate the transfer. First, the prosecutor must file with the authorities in the sending State written notice of the custody request, approved by a court having jurisdiction to hear the underlying charges. For the next 30 days, the prisoner and prosecutor must wait while the Governor of the sending State, on his own motion or that of the prisoner, decides whether to disapprove the request. If the Governor does not disapprove, the prisoner is transferred to the temporary custody of the receiving State where he must be brought to trial on the charges underlying the detainer within 120 days of his arrival. Again, if the prisoner is not brought to trial within the time period, the charges will be dismissed with prejudice, absent good cause shown.

449 U.S. at 444 (footnote omitted).

This litigation concerns a prisoner transfer pursuant to Article 4 of the IAD.

Cause 424—Early Proceedings

On March 20, 1979, the petitioner was charged by information with three counts of dealing in a schedule IV controlled substance (Diazepam), class C felonies, under Cause 424. These charges arose from events that occurred on January 28, 1979, March 9, 1979, and March 12, 1979. (J.A. 2-10, R.7-12) On April 5, 1979, the petitioner was arraigned, entered a plea of not guilty and requested a jury trial. After several interlocutory motions not immediately relevant here, on November 16, 1979 the petitioner withdrew his not guilty plea and entered a guilty plea pursuant to the Recommendation for Plea Bargain filed on the same date. (J.A. 23-25, R.37-38) However, on December 14, 1979, the court rejected the plea bargain and set trial for March 6, 1980. (J.A. 35, R.139) A continuance was later granted.

Cause 470—Early Proceedings

On May 5, 1980, petitioner was arraigned on Cause 470. He was charged with two counts of delivery of marijuana. (R.522) These events were alleged to have occurred on December 17 and 21, 1979. Petitioner entered a plea of not guilty and requested a jury trial.

On November 19, 1980, petitioner was incarcerated in Southern Michigan Prison, Jackson, Michigan as a result of a conviction in the Michigan courts. (J.A. 72, R.576)

The Interstate Agreement On Detainers

On March 16, 1981, while the petitioner was serving a sentence in the Southern Michigan prison at Jackson, Michigan, the Indiana prosecutor mailed the warden certified copies of a two-count class D felony charge, Cause 470, and requested that it be filed as a detainer against

the petitioner under the provisions of the IAD.[2] (J.A. 88-106, R.555-59) On March 19, after being informed of the provisions of the IAD by an official of the warden's office, and after talking to an attorney, the petitioner signed a waiver and voluntarily agreed to be returned to Indiana for trial on the offenses listed in Cause 470, two counts of delivery of marijuana. (J.A. 62, R.562) The petitioner was told that he had the option to oppose extradition and request a hearing. He was also told that if he waived a pretransfer hearing, he would be charged with dealing in marijuana. (J.A. 62, R.562) He responded "well, no problem, I guess I'll sign it." (J.A. 62, R.562-63) The petitioner testified that, if he had known that the State of Indiana was seeking to extradite him for prosecution under the more serious counts in Cause 424, he would not have waived an extradition hearing. (J.A. 63, R.564) As to Cause 424, the petitioner testified that "no one had

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[2] One of the documents sent to Michigan erroneously described the outstanding charge as a three-count information dealing in marijuana under Cause 424. (J.A. 89-91, R.556, Def. Ex. #2) The Court of Appeals of Indiana noted:

> This document was apparently understood by Michigan authorities to refer to the two-count dealing in marijuana information transmitted earlier. The record shows Ramirez was informed in writing of the following outstanding information against him: "Howard County, Indiana—two counts of delivery of marijuana; bench warrant." Record at 559. Further, there is evidence the Michigan authorities verbally informed Ramirez his return to Indiana was requested to stand trial on charges of dealing in Marijuana, a class D felony.
>
> Based on this evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the terms of the Agreement. The fact the Agreement on Detainers Form V transmitted to Michigan had typed upon it "Cause Number 424" is not sufficient evidence to the contrary.
>
> *Ramirez* v. *State*, 455 N.E.2d 609, 613 (Ind. Ct. App. 1983).

no knowledge of it. There was no knowledge in Michigan whatsoever." (J.A. 65, R.566)[3]

Indiana Proceedings Under The IAD

On July 21, 1981, the petitioner was returned to Indiana pursuant to the IAD. (J.A. 75, R.580) On July 23, 1981, a Recommendation for Plea Bargain was filed in Cause 424. (J.A. 44-45, R.158-59)[4] On August 17, 1981, the petitioner moved to withdraw the plea bargain. The court granted the motion and set an omnibus hearing for October 14, 1981 and a jury trial for December 10, 1981. (J.A. 47, R.192)

On January 15, 1982, petitioner filed a motion to dismiss Cause 424 on the ground that the prosecution of this charge violated the IAD since the detainer lodged in Michigan dealt only with Cause 470. (J.A. 52-58, R.211-16) The court overruled the motion. (J.A. 111, R.219)

On May 11, 1982, the jury trial proceedings began.[5] Subsequently, petitioner pleaded guilty to the charges listed in Cause 470. The jury found the petitioner guilty

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[3] The petitioner also testified that on January 23, 1981, he met at the Michigan prison with his attorney who advised him of the possibility of a plea bargain involving Causes 470, 424, and two other unrelated Indiana "causes." (J.A. 72, R.576) He further testified that this plea bargain was never consummated, and that a plea bargain filed on July 23, 1981 was a separate and different agreement. (J.A. 72-75, R.576-79)

The record also contains testimony about a later conversation in April of 1981 with respect to a plea bargain. (J.A. 72-73, R.577) *See infra* note 27.

[4] Petitioner testified that, at the time he was brought back to Indiana, he was not involved in a plea bargain. (J.A. 135, R.1136)

[5] The petitioner requested that the court reconsider his motion to dismiss. After hearing arguments from counsel, the court again overruled the motion. (R.228)

on each count in Cause 424. (J.A. 113, R.264) On June 8, 1982, the petitioner was sentenced in Cause 424 to the Indiana Department of Corrections for 5 years. (J.A. 117-18, R.424) He was sentenced to two years on Cause 470; this sentence was to run consecutively to that in Cause 424. (J.A. 121, R.1033)

Post-Trial Proceedings

On July 22, 1982, the court heard and denied the petitioner's request for the appointment of a public defender. (R.431) On August 10, the petitioner filed a motion to correct errors (J.A. 122-25, R.432-36), which the court overruled on October 26, 1982. (J.A. 164, R.445)

The Appeal

The petitioner then filed a *pro se* appeal to the Court of Appeals of Indiana. This issue was one of first impression in Indiana. The Court of Appeals affirmed the trial court's denial of the motion to dismiss, finding that, although the petitioner's prosecution in Indiana for Cause 424 was outside of the terms of the IAD, Indiana nonetheless retained jurisdiction: "The manner in which a defendant is brought before the court has no effect upon the court's jurisdiction over him." *Ramirez* v. *State*, 455 N.E.2d 609, 613 (Ind. Ct. App. 1983). (J.A. 171) The court concluded: "Although we do not countenance the State's failure to comply with the provisions of the Agreement as to cause 424, the State's failure does not warrant dismissal of this case. . . . This is not to say Ramirez may not have a remedy for the State's failure to file a detainer against him in Cause 424 before trying him in that cause." *Id.* at 614. (J.A. 171)

The petitioner then filed a petition to transfer the appeal to the Indiana Supreme Court. On May 11, 1984, the Indiana Supreme Court denied the petition to trans-

fer. On July 13, 1984, the petitioner filed a pro se petition for certiorari, which this Court granted on October 29, 1984. On, November 13, 1984, the Court granted petitioner's motion for the appointment of counsel.

SUMMARY OF ARGUMENT

The plain meaning of the Interstate Agreement on Detainers (IAD) should be the basis of decision in this case. The signatory states meant what they said when, in section 5(d), they agreed that the requesting state would have temporary custody of the prisoner for the sole purpose of prosecution on the charge which forms the basis of the detainer. Since Michigan retained custody for all other purposes under section 5(g), Indiana had no authority to try the petitioner on charges not mentioned in the detainer.

Such a plain reading of the IAD is consistent with the general rules of statutory construction. It is also consistent with the role of interstate compacts in our federal system and with the particular purposes of the IAD. In its earlier cases, this Court has established the rule that the important interest of ensuring the integrity of the interstate compact requires that "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Texas* v. *New Mexico*, ___ U.S. ___, ___, 103 S. Ct. 2558, 2565 (1983). Unless courts give an interstate compact the meaning it was intended to have by strictly enforcing its terms, states will be reluctant to enter into them and will be casual in their adherence to them.

The IAD was designed to produce ease and regularity in the management of interstate corrections and fairness for the prisoner. To achieve these goals, the states have bound themselves to a higher standard of behavior than

the one embodied in *Frisbie* v. *Collins*, 342 U.S. 519 (1952) and *Ker* v. *Illinois*, 119 U.S. 436 (1886). They agreed to accept, as a matter of federal law, a limitation on their usual exercise of criminal jurisdiction. The states recognized that intentional—or even sloppy unintentional—misrepresentations by a sister state can cause serious disruptions in a corrections program which exact a high cost from both the incarcerating state and the prisoner.

The Court of Appeals of Indiana treated the obligation of Indiana under the IAD as a matter of internal procedural law—not a federal duty. Its interpretation of the compact stands "as an obstacle to the accomplishment of the full purposes and objectives . . ." of the congressionally sanctioned compact. *Silkwood* v. *Kerr-McGee Corp.*, ___ U.S. ___, ___, 104 S. Ct. 615, 621 (1984).

ARGUMENT

I. Introduction

The immediate issue before this Court is an interpretation of the Interstate Agreement on Detainers (IAD). More precisely, the Court is asked to determine whether the Congress and the legislatures of the 48 states that have entered the compact meant what they said when, in section 5(d), they agreed that:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, of[6] [sic] complaints which form the basis of the detainer or detainers or for prosecution on any other charge or

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[6] The IAD has been so enrolled in the Indiana Code. "This probably should read 'or,' " Ind. Code Ann. § 35-2.1-2-4 n.1, at 487 (West). The IAD has been similarly recodified in Indiana, *see* § 35-33-10-4.

> charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

Moreover, there is a far broader issue at stake in this case—the vitality of the interstate compact in our federal system. This Court's interpretation of the IAD[7] in this case will have a significant impact on the usefulness of the interstate compact in solving other public policy questions that can best be addressed on an interstate basis. If commitments, freely undertaken in the interest of interstate harmony, are found to have "wax teeth,"[8] states will become understandably reluctant to enter into such arrangements. The alternative is reliance on federal legislative power to solve the problems at hand—an alternative which brings with it a significant shift in the ability of the states to take the initiative in solving problems for themselves. Indeed, it was, we submit, the failure of the Indiana Court of Appeals to recognize the federalism implications inherent in the IAD which caused it to interpret the pact as provincially as it did.

In the following pages, therefore, we shall argue that a plain reading of the text of the IAD makes it clear that the judgment of the Indiana Court of Appeals must be reversed; indeed, an analysis which takes into account the function of the interstate compact in our constitutional order makes such a disposition compelling.

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[7] There can be no doubt that the Interstate Agreement on Detainers is an interstate compact sanctioned by Congress and thus "transform[ed] . . . into a law of the United States" *Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981).

[8] *People* v. *Esposito*, 37 Misc.2d 386, 391, 238 N.Y.S.2d 460, 465 (Queens County 1960) (also printed at 201 N.Y.S.2d 83, 88).

II. An Established Fact: A Violation of the IAD

We start our analysis of the precise issue presented in this case on what appears to be—and certainly ought to be—common ground: there was a violation of the IAD.

1. The statutory language is clear and unequivocal: section 5(d) states in pertinent part:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, of[9] [sic] complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.

2. The facts of record clearly establish that the petitioner was returned from Michigan pursuant to a detainer which specified only the offenses set forth in Cause 470. (J.A. 88-106; R.555-59)

3. The Indiana Court of Appeals concluded that "a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the terms of the Agreement." *Ramirez* v. *State*, 455 N.E.2d 609, 613 (Ind. Ct. App. 1983).

4. The State of Indiana in its Brief in Opposition to Petition for Writ of Certiorari concedes that "the Petitioner's presence in Indiana on Cause 424 . . . was secured in violation of the terms of the Agreement." (*Id.* at 7.)

III. The Consequences Of The Violation

A. The Plain Meaning Of The IAD

Given the fact that a violation of section 5(d) of the IAD did take place, the next—and crucial—focus in this case

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[9] *See supra* note 6.

must be upon the legal consequences of such a violation. In his motion to dismiss at trial and on appeal to the Indiana Court of Appeals, the petitioner submitted that the court was without authority to try him on the charges not mentioned in the detainer and not related to the charges mentioned in the detainer.

Here, again, the plain wording of the IAD should end the matter.[10] Section 5(g) states:

> For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in *the custody of and subject to the jurisdiction of the sending state. . . .*
>
> (emphasis added)

In short, since Michigan retained jurisdiction for all purposes other than the trial of Cause 470, Indiana had no authority to try petitioner on Cause 424 and, consequently, should have dismissed the proceeding.

Moreover, as we shall argue in the following subsections, the role of the interstate compact in our constitutional structure, and the overall purpose of the IAD to promote interstate harmony and cooperation in the area of criminal justice administration, offers no reason to

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[10] The limited authority of the receiving state to try the criminal charge set forth in the detainer and accompanying indictment is also evident from the Agreement's explicit provision that failure to commence trial within 120 days after the prisoner is returned will result in dismissal of the indictment. (Article 4 §§ (c)(e))

In the state appellate court, the State suggested that the absence of a similar provision with respect to the possibility of trial on an indictment not mentioned in the detainer demonstrates that such action was not contemplated by the drafters. However, a far less speculative, indeed plausible, explanation exists for the difference in approach. The entire scheme of sanctions set forth in the Agreement presupposes that the prisoner was properly brought into the state on a specific charge.

deviate from the usual rule that the words of a statute should be construed according to their plain meaning. Indeed, they add a justification for adhering to that basic rule of statutory construction.

B. Interpreting The Interstate Agreement On Detainers According To Its Plain Meaning Is Compatible With The Role Of Interstate Compacts In Our Constitutional Scheme

In *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959), this Court noted, with a good deal of emphasis, that an interstate compact ought to be construed "as a living interstate agreement which performs high functions in our federalism. . . ." *Id.* at 279 (footnote omitted). In *Texas* v. *New Mexico*, ___ U.S. ___, ___, 103 S.Ct. 2558 (1983), the Court, with no less emphasis, said that a construction compatible with those "high functions" was achieved by construing a compact according to its plain meaning. Indeed, noted the Court, "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Id.* at 2565. See also *California ex rel. Younger* v. *Tahoe Regional Planning Agency*, 516 F.2d 215, 218 (9th Cir. 1975).

We submit that the foregoing approach, developed by the Court in *Petty* and *Texas*, is a sound one and ought to be followed in this case. As we point out in greater detail in the following paragraphs, it is an approach compatible with the role which the interstate compact must play in our federal structure. That role is best understood by comparing the Constitution's three basic approaches to interstate relationships:

1. Constitutionally Imposed Minimal Standards Of Conduct

Through a variety of provisions, the Constitution sets constitutional minima for the relationships of the states in

certain crucial areas where particular stress in the interstate system can be expected. For instance, the Privileges and Immunities Clause,[11] which has received a good deal of attention from the Court in recent times, sets constitutional minima with respect to the treatment of citizens of one state by sister states. In similar fashion, the Full Faith and Credit Clause[12] sets the constitutionally minimum obligation of the states with respect to the completed judicial acts of sister states as well as with respect to the legislative acts of other states. The Extradition Clause[13] also sets the constitutional minima with respect to the obligation of one state to deliver up fugitives at the request of a sister state.

2. The Opposite Extreme: Federal Control

The Constitution recognizes, however, that these minimally acceptable modes of conduct may not be sufficient in all situations. Consequently, it also provides that the Congress can, through an exercise of the national legislative power, deal at the national level with problems of interstate relationships which require, at any given time in the Nation's development, the imposition of a national policy. As this Court acknowledged in *Cuyler* v. *Adams*, 449 U.S. 433, 442 n.10 (1981), the area at issue in this case—the interstate rendition of prisoners—is subject to congressional legislation under both the Commerce Clause[14] and the Extradition Clause.[15] *Id.* at 442.

There is, of course, a significant cost in terms of the country's federalism when Congress acts in such a nation-

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[11] U.S. Const. art. IV, § 2, cl. 1.

[12] U.S. Const. art. IV, § 1.

[13] U.S. Const. art. IV, § 2, cl. 2.

[14] U.S. Const. art. I, § 8, cl. 3.

[15] *See supra* note 13.

al way. The options of states to govern themselves, to deal with problems at the local level, to experiment, and to enter into cooperative arrangements on their own, is necessarily limited.[16] Therefore, to avoid such extremes, the Constitution also permits a mid-ground between the two options mentioned above—the interstate compact.

3. The Mid-Ground: The Compact Clause[17]

An interstate compact permits the states to take the initiative for the substantive solution to interstate problems. By comparison with the option set forth immediately above, the federal role here is far more passive. Thus, the basic quality of a federal system—permitting the states to solve their own problems— is preserved. At the same time, however, two important federal interests are protected. First, of course, there is the federal interest in ensuring that the compact does not infringe on the prerogatives of the federal government. *United States Steel Corp.* v. *Multistate Tax Commission*, 434 U.S. 452 (1978).[18] Second, and just as importantly, there is a very

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[16] "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co.* v. *Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[17] U.S. Const. art. I, § 10, cl. 3.

[18] "[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause," *Cuyler* v. *Adams*, 449 U.S. 433, 440 (1981) (footnote omitted). Congressional approval amounts to a legislative judgment that the agreement is not "likely to interfere with federal activity in the area," *id.* at 440 n.8 (quoting *United States Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452, 485 (1978) (White, J., dissenting)), is not "likely to disadvantage other States to an important extent," *id.*, and is not "a matter that would better be left untouched by state and federal regulation," *id.*

important federal interest in ensuring the integrity of the interstate agreement and in the continuance of interstate harmony. *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951).

This second federal interest must be carefully protected if the interstate compact is to remain a viable mechanism for the resolution of interstate problems. The interstate compact "adapts to our Union of sovereign States the age-old treaty-making power of independent sovereign nations." *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938). In the international community, treaties are to be construed to ensure that each signatory sovereign fulfills its commitment. Within the federal union, that objective ought to be even more paramount. Interstate agreements, if they are to remain a viable tool in our federal system, must be interpreted strictly so that the parties are held to their commitment. Put quite bluntly, states will only enter into such agreements and faithfully abide by their commitments if they know that they will be strictly enforced and not judicially rewritten.

Interpreting the IAD according to its plain meaning is, therefore, compatible with the purpose of the interstate compact. It promotes the expectations of the states and encourages their cooperation in the enforcement of the agreement. Therefore, we do not argue here for a judicially-imposed prophylactic rule. Rather we ask, quite simply, that this Court give to a legislative enactment, the IAD, the meaning it was clearly intended to have. *Frisbie* v. *Collins*, 342 U.S. 519, 523 (1952). "[T]he mandatory language of Article IV, together with its stringent penalties, manifests an intent that party States adhere strictly to procedures and time limits provided in the Agreement." *United States* v. *Eaddy*, 595 F.2d 341, 346 (6th Cir. 1979); accord *Burrus* v. *Turnbo*, 743 F.2d

693, 702 (9th Cir. 1984). See generally *Hughes* v. *District Court*, 197 Colo. 396, 400-01, 593 P.2d 702, 705 (1979).

In the context of Contract Clause[19] litigation, the Court has acknowledged that, when a government entity attempts to repudiate its own contractual obligation, a higher standard of scrutiny is justified than when the government impairs the obligation of private contracts. The "State's self-interest is at stake." *United States Trust Co.* v. *New Jersey*, 431 U.S. 1, 26 (1977). We suggest that, when a state offers a "self-serving construction of its duty . . .," *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275, 284 (1959) (Frankfurter, J., dissenting), not to a private entity but to a sister state,[20] its explanation ought to be subject to particularly searching scrutiny—especially when it deviates from the plain meaning of the agreement. Here, the state simply has not carried that burden.

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[19] U.S. Const. art. I, § 10, cl. 1.

[20] In *Green* v. *Biddle*, 21 U.S. (8 Wheat.) 1, 92 (1823), this Court treated a state law in contravention of an interstate compact as impairing the obligation of contracts. See also *Virginia* v. *West Virginia*, 246 U.S. 565 (1918). See generally *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 433 (1855) (dicta). In *C. T. Hellmuth & Assocs.* v. *Washington Metropolitan Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976), the court wrote:

> Upon entering into an interstate compact, a state effectively surrenders a portion of its sovereignty; the compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law. Further, when enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties.

Accord *Jacobson* v. *Tahoe Regional Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977), *Wilkens* v. *Erickson*, 505 F.2d 761, 762 (9th Cir. 1974), *Wilkens* v. *Erickson*, 484 F.2d 969, 973 (8th Cir. 1973).

C. Interpreting The Interstate Agreement On Detainers According To Its Plain Meaning Is Compatible With The Purposes Of This Compact

1. The Purposes Of the IAD

The purposes of the IAD are set forth succinctly in Article I of its text:

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

As this Court noted at some length in *United States* v. *Mauro*, 436 U.S. 340 (1978), prior to the enactment of the IAD, the problem of interstate rendition of prisoners placed significant strains on the interstate system:

> Prior to the Agreement, there were several means by which States could obtain prisoners from other jurisdictions, none of which was entirely satisfactory. The traditional method was the use of formal extradition proceedings. This required a request for the prisoner by the Governor of the receiving State. It was sent to the Governor of the State that had custody of the prisoner, and he was permitted to investigate the situation to determine if the prisoner should be surrendered. If the Governor agreed to the extradition, he issued an arrest warrant against the

> prisoner, who was then permitted to challenge the legality of his arrest.
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> Rather than going through this formal procedure, some States entered into special contracts controlling the transfer of prisoners. The effort involved in arriving at such a contract, however, was often thought to outweigh the benefit of the simplified procedures unless there were frequent prisoner transfers between two States.
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> Because of problems with both of these methods, law enforcement authorities developed the informal practice of filing detainers against the prisoners; rather than seeking immediate transfer, the State would merely notify the State having custody of the prisoner that he was wanted at the completion of his sentence. This practice led to various problems.
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> 436 U.S. at 355 n.23.

Quoting from the Fourth Circuit's decision in *Pitts* v. *North Carolina*, 395 F.2d 182, 187 (1968) (footnotes omitted), the Court further elaborated on the abuses the states sought to avoid by implementing the IAD:

> Detainers, informal aides [sic] in interstate and intrastate criminal administration, often produce serious adverse side-effects. The very informality is one source of the difficulty. Requests to an imprisoning jurisdiction to detain a person upon his release so that another jurisdiction may prosecute or incarcerate him may be filed groundlessly, or even in bad faith, as suspected by the appellant in this case. The accusation in a detainer need not be proved; no judicial officer is involved in issuing a detainer. As often happens, the result of the then unestablished charge upon which the detainer in this case rested was that the detainee was seriously hampered in his quest for a parole or commutation.
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> 436 U.S. at 358 n.25.

While the informal practice of filing detainers against a person incarcerated in another state certainly had an

adverse effect upon the prisoner, it also had a very significant effect on the operations of the penal system of the incarcerating state as well. As this Court pointed out in *Mauro:*

> In recommending the adoption of the Agreement, the Council of State Governments outlined some of the problems caused by detainers that the Agreement was designed to address. It noted that prison administrators were "thwarted in [their] effort[s] toward rehabilitation [because t]he inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program." Council of State Governments, Suggested State Legislation Program for 1957, p. 74 (1956). Furthermore, the prisoner was often deprived of the ability to take advantage of many of the prison's programs aimed at rehabilitation, merely because there was a detainer lodged against him. This problem was noted by the Director of the Federal Bureau of Prisons, who in 1959 stated that he "remember[ed] the day when the presence of a detainer automatically guaranteed that the inmate would be held in close custody and denied training and work experiences in more relaxed situations, such as the farm, which frequently represent a valuable resource in treating prisoners and testing their progress." Bennett, The Last Full Ounce, 23 Fed. Prob. 20, 21 (June 1959). The Council of State Governments also pointed out that the existence of detainers presented problems in sentencing; when detainers had previously been filed against the defendant, the sentencing judge would hesitate to give as long a sentence as he thought might otherwise be indicated, there being a possibility that the defendant would be required to serve subsequent sentences. The Council stated that "proper sentencing, as well as proper correctional treatment, is not possible until the detainer system is modified." Council of State Governments, *supra*, at 74. Similar concerns were expressed by the Attorney General in his recommendation to Congress. *See supra*, at 353.
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> 436 U.S. at 359-60.

In agreeing to the terms of the IAD, then, the states sought to replace a sloppy, casual and sometimes vindictive system with one which was compatible with the goals of a modern corrections system. Two results were intended: a.—ease and regularity in the management of interstate corrections; b.—fairness to the prisoner involved. In the following paragraphs, we shall argue that both of these goals are furthered by adherence to the plain meaning of the compact.

2. Achieving Cooperative Federalism In The Management Of Interstate Corrections

The IAD represents a mutual effort by the states of the Union that stands in stark contrast to "an alarming tendency toward a simplistic penological philosophy that if we lock the prison doors and throw away the keys, our streets will somehow be safe." *Rhodes* v. *Chapman*, 452 U.S. 337, 377 (1981) (Marshall, J., dissenting). In *United States* v. *Mauro*, this Court noted that "[the] purpose [of the IAD] is to encourage the expeditious disposition of such charges and to provide cooperative procedures among member States to facilitate such disposition." 436 U.S. at 351. In forging a *modus operandi* for their day-to-day contact in an area of vital state interest, the signatory states had a higher goal than mere compliance with the constitutionally imposed "minimum standards of conduct" for the states of the federal Union. They held themselves to a higher standard of cooperation and respect for the legitimate governmental interests of each other. While conduct such as that encountered in *Frisbie* v. *Collins*, 342 U.S. 519 (1952) and *Ker* v. *Illinois*, 119 U.S. 436 (1886) might be constitutionally acceptable as a general proposition,[21] it would no longer be practiced by

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[21] While the Court clearly does not need to reach the issue in this case, we note that the more recent decisions of this Court cast some

the signatory states. At least in the area covered by the IAD, such behavior was simply not conducive to the attainment of the correctional goals of each state.

Therefore, by adhering to the IAD, Indiana bound itself, in exchange for greater cooperation from its sister states in the administration of its own criminal justice system, to accept, as a matter of federal law, a restriction on the usual exercise of its own criminal jurisdiction. While its courts normally exercise criminal jurisdiction over any person within its borders, Indiana, by virtue of the IAD, may exercise that jurisdiction only with respect to a matter mentioned in the detainer or arising out of the same transaction when it has procurred the defendant's presence from the custody of a sister state. This limitation—federally imposed through the IAD but freely agreed to by Indiana—exists because of Indiana's previous commitment not to the petitioner but to its sister states. It took, in the words of the IAD, "temporary custody" from Michigan for a specific purpose—trial of Cause 470. It agreed to limit its infringement on Michi-

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doubt on the continued vitality of *Frisbie* and *Ker*, at least as general propositions. In *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), the Court noted that the Due Process Clause, "acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 294. In *Insurance Corp. of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), the Court appeared to restrict its earlier language by noting that the "restriction on state sovereign power . . . must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause." *Id.* at 702 n.10. However, since, in the interstate rendition of prisoners, it is the strictures of the federal system which create the potential for mistreatment of the prisoner, it is quite appropriate to consider a violation of those mechanisms established to ensure the smooth operation of the federal system as a source of unfairness to the prisoner as well.

gan's authority for that purpose and for that purpose only. Indeed, under section 5(g) of the IAD, Michigan retained custody of Ramirez for all purposes other than the trial of Cause 470. See *People* v. *Hayden*, 98 Misc.2d 574, 414 N.Y.S.2d 473 (N.Y. Sup. Ct. 1979); see also *Mills* v. *State*, 626 S.W.2d 583 (Tex. App. 1981). Assumption of temporary custody for the purpose of disposing of a particular criminal charge is a significant intrusion into the sovereign power of the incarcerating state to effectuate its own criminal justice system through a sustained period of rehabilitation. Its courts have imposed a sentence upon the prisoner designed to effectuate his rehabilitation. Therefore, important penological interests of the incarcerating state are interrupted by this demand for the prisoner and it has a right, recognized in the IAD, to know the degree and duration of the intrusion into its processes. Intentional misrepresentations—or even sloppy unintentional ones—by a sister state can seriously impair the ability of the incarcerating state to achieve its important penological objectives.

It should be noted that we do not challenge, as was done in at least one case raising the same issue, the general proposition that a court may exercise criminal jurisdiction over any person who is physically present within the state. See, e.g., *People* v. *Pagan*, 84 Misc.2d 565, 377 N.Y.S.2d 420 (N.Y. Sup. Ct. 1975). We simply submit that, by ratification of the IAD, Indiana agreed to temper its exercise of the jurisdiction it might otherwise exercise.[22] See generally *Camp* v. *United States*, 587 F.2d

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[22] It was a similar failure to recognize fully the federal nature of this obligation which led the Colorado Supreme Court to the same error in *Brown* v. *District Court*, 194 Colo. 225, 571 P.2d 1091 (1977); accord *Jones* v. *Florida*, 386 So.2d 804 (Fla. Dist. Ct. App. 1980). These courts did not, of course, have the benefit of this Court's ruling in *Cuyler*. The Superior Court of Pennsylvania similarly ignored the

397, 399 n.4 (8th Cir. 1978) (characterizing the somewhat analogous "speedy trial" provisions of the IAD as a "condition precedent" to prosecution). We also note that self-imposition of restrictions on the exercise of general judicial jurisdiction in order to forward other state interests is not an unknown device in American law. The decision to exercise such restraint in the use of judicial jurisdiction is a matter of legislative decision. For instance, many states grant immunity from civil suit to persons who enter the state to attend civil or criminal proceedings.[23] Such immunity has also been extended to criminal process. The Uniform Act to Secure the Attendance of Witnesses From Without A State In Criminal Proceedings, 11 U.L.A 1 (1936), (adopted in Indiana as §§ 35-37-5-1 to 35-37-5-9) provides in section 4:

> If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.
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> If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or

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federalism obligations inherent in the IAD in *Commonwealth* v. *Frison*, 301 Pa. Super. Ct. 498, 448 A.2d 18 (1982). In any event, "the meaning of a compact is a question on which this Court has the final say." *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 278 (1959) (footnote omitted).

[23] *See* E. Scoles & P. Hay, *Conflict of Laws* § 11.18, at 375 (1982); *see also* R. Leflar, *American Conflict of Law* § 27, at 47 (3d ed. 1977); R. Weintraub, *Commentary on the Conflict of Laws* § 4.34, at 213 (2d ed. 1980).

> criminal, in connection with matters which arose before his entrance into this state under the summons.

While the same protection is not extended to the *non*-incarcerated fugitive who is apprehended in another state,[24] here, where the obtaining of criminal jurisdiction involves a serious intrusion into the criminal justice and correctional activities of another state, Indiana—and almost all of the other states of the Union—have determined that such a partial limitation on its ability to exercise criminal jurisdiction is appropriate in light of the benefits to interstate cooperation received in return.

In sum, the states, in agreeing to this mechanism, intended not only "to protect the legitimate interests of the prisoner in having open charges expeditiously resolved, but also to harmonize the conflicting sovereign interests of the two States involved and to minimize any disruption to the prison regimen and the prisoner's participation in it." *Boyd* v. *State*, 51 Md. App. 197, 202-03, 441 A.2d 1133, 1336-37 (Md. Ct. Spec. App. 1982) (footnote omitted). If the arrangement is to work, this Court must hold the states to the bargain they themselves have forged. See *Texas* v. *New Mexico*, ___ U.S. ___, 103 S.Ct. 2558 (1983).

3. Protecting The Prisoner In The Interstate Context

In addition to holding the signatory states to a level of conduct which would foster interstate cooperation and protect states from needless disruption of their penal system, the IAD was also designed "to protect prisoners against whom detainers are outstanding." *Cuyler* v. *Adams*, 449 U.S. 433, 449 (1981). It accomplished this end

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[24] Uniform Criminal Extradition Act § 26, 11 U.L.A. 51, 302 (1936) (adopted in Indiana as § 35-33-10-3).

by providing the prisoner with procedural protections specifically designed to prevent the abuses which the legislatures and the Congress had discovered in their study of interstate rendition of prisoners. The prisoner has the right to rely upon the plain meaning of the IAD. The State "through its agents and its control of the procedural aspects of the IAD, controls the only ultimate guarantee of performance for the benefit of the prisoner." *Pittman* v. *State*, 301 A.2d 509, 513 (Del. 1973). The IAD "is obviously remedial in character[,] . . . [and] should be construed liberally in favor of [those whose problems were sought to be alleviated.]" *United States ex rel. Esola* v. *Groomes*, 520 F.2d 830, 836 (3d Cir. 1975) (quoting *State* v. *West*, 79 N.J. Super. 379, 384, 191 A.2d 758, 760 (App. Div. 1966)). See generally *Commonwealth* v. *Gregg*, 470 Pa. 323, 327-29, 368 A.2d 651, 653 (1977).

For some, prompt disposition of the charges was very important. As the Court noted in *Cuyler*, "a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding." As stated in the House and Senate Reports:

> "[A] prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing." H.R. Rep. No. 91-1018, p. 3 (1970); S. Rep. No. 91-1356, p. 3 (1970).
>
> 449 U.S. at 449.

For a prisoner in this situation, Article 3 of the IAD provides that he be notified of the outstanding charges and given the opportunity to request trial. Failure to bring him to trial within 180 days results in the dismissal of the charges. Consequently, the prisoner is assured of a speedy trial. Cf. *Smith* v. *Hooey*, 393 U.S. 374 (1969). *See generally* Committee on the Judiciary, Enacting the Interstate Agreement on Detainers into Law, H.R. Rep. No. 1018, 91st Cong., 2d Sess. 6 (1970).

The drafters also recognized, however, that, under some circumstances, a prisoner might believe it necessary to resist his transfer for trial in another state. In addition to the right to petition the Governor of the sending state (4(a)), a prisoner in this situation is entitled to the procedural protections of the Extradition Act (in those states which have adopted it) as well as any other procedural protections which the sending state guarantees persons being extradited from within its borders. *Cuyler* v. *Adams*, 449 U.S. 433, 447-48 (1981).

As the Colorado Supreme Court noted in *Hughes* v. *District Court*, 197 Colo. 396, 593 P.2d 702 (1979), "[t]here is no requirement in the Interstate Agreement on Detainers that a prisoner demonstrates that prejudice resulted from a violation of its provisions. It does not appear that such a requirement would further the purposes of the Agreement as spelled out in Article I. . . ." *Id.* at 402; 593 P.2d 706. The State chose to employ the IAD; it controls the standard of performance in its execution. See *Pittman* v. *State*, 301 A.2d 509 (Del. 1973).[25] However, at trial, petitioner testified that, while a pris-

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[25] As this Court noted in *Cuyler* v. *Adams*, 449 U.S. 433, 448 (1981), "Article IX of the Detainer Agreement states that the Agreement 'shall be liberally construed so as to effectuate its purpose.' "

oner in Michigan, he was only informed of a detainer from Indiana with respect to Cause 470:

Q. And directing your attention to earlier this year, approximately March of 1981, where did you reside?

A. Southern Michigan Prison at Jackson

JUDGE: I'm sorry. What date?

MR. McSHANE: Around March of 1981, Your Honor.

Q. Was that correct, sir?

A. Yes, Southern Michigan Prison at Jackson.

Q. And did there come a time when you received notice through the prison administration up in Jackson about the pending charges against you here in Indiana?

A. Yes, I received a detainer against me on March 16th or 19th. One of the two dates. At that time I appeared in front of the counsel and they told me they had affidavits and probable cause. And a bench warrant and two indictments of dealing in marijuana. One on the 17th and one was on the 21st of 1979.

Q. Representation made to you sir, what did they [sic] charges pertain to?

A. Yes, it was Cause No. 470, dealing in marijuana.

Q. Ok, was there any, at that time, oral notice given to you about the desire of the State of Indiana as communicated through authorities in the State of Michigan to prosecute you on three counts of Dealing in a Schedule IV Controlled Substance?

A. No, there wasn't.

Q. Did any of the documents which were shown to you pertain to the charges in Cause No. 470, contain any information, quote, any criminal information against you pertaining to charges of Dealing in a Schedule IV Controlled Substances?

A. No, there wasn't.

(J.A. 61-62, R.561-62).

He further testified that, if he had been aware of Indiana's intention to try him on Cause 424,[26] he would have exercised his rights under the IAD and the Uniform Extradition Act:[27]

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[26] The charges in Cause 424 here were substantially different from those set forth in Cause 470. There can be no question that, unlike the defendants in *State* v. *Tyson*, 603 S.W.2d 748 (Tenn. Crim. App. 1980) and *Dotson* v. *State*, 463 N.E.2d 266 (Ind. 1984), the petitioner was not apprised of the State's intention to try him on Cause 424. Indeed, the Indiana Court of Appeals specifically noted that "[b]ased on the evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424 . . . was secured outside the terms of the Agreement." 455 N.E.2d at 613.

[27] Similar testimony appears at a later point in the hearing:

> Q. Mr. Ramirez, would you have, in fact, formally waived extradition from the State of Michigan to the State of Indiana last March had you known that the state was seeking, the State of Indiana, was seeking to bring you down here to prosecute you for three C felonies being the counts in Cause No. 424 Dealing in a Schedule IV Controlled Substance?
>
> A. Yes, I would have fought it. I would never have returned to Indiana.
>
> (J.A. 68, R.571)

Petitioner also testified that he had consulted with his attorney about a plea bargain on both causes at an earlier date in January 1981. (J.A. 72, R.576) It was not consummated. (J.A. 72-73, R.576-77) He also described a later conversation with his attorney about a plea bargain:

> Well, then in April he come to see me. Mr. Lockwood came to see me in April of 1981. At that time he informed me that Mr. Bly who took the prosecutor attorney's job, I mean, he was going to appear for the State and he come and told me, and I said well, what's the deal on the two years. And at that time he says that the two years was the deal between him and Mr. Weike. So, he said, well, they lodged a detainer. I guess you already know that so you'll be coming back to Kokomo, Indiana, Howard County. And I said well, whatever, you know, so I came back on July 21 of '81.
>
> (J.A. 72-73, R.577)

> Q. Now, Mr. Ramirez, had you known that the State of Indiana was seeking to extradite you for prosecution under the Schedule IV counts in Cause No. 424, would you have voluntarily waived extradition from Michigan, or would you have sought legal counsel and perhaps a hearing on that?
>
> A. I definitely would have had a hearing.
>
> (J.A. 63, R.564)

Since he never had the opportunity to exercise those rights, the record does not reflect what the outcome of such a hearing would have been. Nor do we know what action the Governor of Michigan would have taken if he had been apprised of Indiana's intentions.[28] It is clear, however, that if the trial court had recognized that, under the IAD, it had no authority to try the petitioner on Cause 424 and had consequently dismissed that charge, petition-

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A plea bargain was signed on July 23, 1981 (J.A. 73, R.578) and later withdrawn. (J.A. 47, R.192) The petitioner testified, however, that, at the time he returned to Indiana he was not engaged in plea negotiations:

> Q. Who was that attorney?
>
> A. Jeffrey Lockwood.
>
> Q. At the time that you were brought back here were you not engaged through him with the State of Indiana in a plea bargain?
>
> A. No, I wasn't.
>
> (J.A. 135, R.1136)

[28] Assuming, *arguendo*, that the defendant can waive this federally-imposed barrier to the exercise of criminal jurisdiction, see, e.g. *People* v. *Moody*, ____ Colo. ____, 676 P.2d 691 (1984), it is clear that neither the trial court nor the appellate court were of the view that petitioner had not preserved his objection and both courts proceeded to decide the issue on the merits. Compare *Dotson* v. *State*, 463 N.E.2d 266, 269 (Ind. 1984) (IAD rights held waived when not timely raised at trial). See generally *United States* v. *Lawson*, 736 F.2d 835 (2d Cir. 1984) (failure to raise IAD rights during first trial did not bar raising them after remand for a new trial).

er would not have an additional felony conviction on his record. Nor would he have had consecutive sentences imposed upon him.

There is no question that a prisoner, under the Indiana Court's proposed reading of the IAD, can lose important rights. While the procedural guarantees available in such circumstances are understandably limited, *Cuyler* v. *Adams*, 449 U.S. 433, 443 n.11 (1981); *Michigan* v. *Doran*, 439 U.S. 282, 286-87 (1978), they may, in a given case, be vital. There is also the distinct possibility that the prisoner may convince the Governor of the incarcerating state that refusal to honor the extradition request, perhaps only temporarily, would be appropriate. Cf. *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66, 107 (1861). For instance, if the prisoner were in the crucial stages of a drug rehabilitation program and, at considerable state expense, had progressed to that point, the Governor might well be convinced that his extradition to another state would not be appropriate. See *Cuyler* v. *Adams*, 449 U.S. 433, 437 n.4 (1981).

In short, both Michigan and the petitioner had the right to be notified of the real nature of Indiana's request. The petitioner had a right to convince the Governor that extradition on those offenses was not appropriate. The Governor had the right to determine whether extradition was compatible with the interests of Michigan. By its failure to disclose fully its intentions, Indiana prevented both from exercising their federally-guaranteed rights.[29]

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[29] Nor does this case reach the issue of whether proceeding under the IAD is the exclusive method by which a demanding state may seek the return of a fugitive from another state. Cf. *State ex rel. Bailey* v. *Shepard*, 584 F.2d 858 (8th Cir. 1978). While it is established that a federal court may demand a state prisoner by means of a federal writ of habeas corpus *ad prosequendum*, *United States* v.

IV. Conclusion: The Underlying Problem: Failure To Acknowledge A Federal Obligation

In the foregoing sections, we have argued that adherence to the general principle that statutes ought to be interpreted according to their plain meaning is consistent with the role of interstate compacts in our federal structure and consistent with the purposes of the IAD. Indeed, any other interpretation of the language of section 5(d) would stand "as an obstacle to the accomplishment of the full purposes and objectives . . ." of the congressionally sanctioned compact. *Silkwood* v. *Kerr-McGee Corp.*, ___ U.S. ____, ____, 104 S.Ct. 615, 621 (1984); see also *Pacific Gas And Electric Co.* v. *State Energy Resources Conservation and Development Commission*, 461 U.S. 190, 203-04 (1983); *Fidelity Federal Savings & Loan Association* v. *De La Cuesta*, 458 U.S. 141, 152-54 (1982). *Jacobson* v. *Tahoe Reginal Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977), rev'd in part and aff'd in part sub nom. *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U.S. 391 (1979). If the signatory states to the IAD do not keep their word and adhere to the arrangement to which they freely subscribed, the cooperative federalism intended by the agreement—and expected by the Congress—will be significantly frustrated. The callousness and sloppiness in intergovernmental administration of criminal justice which existed prior to the date of the IAD will once again become the norm. "[T]he way would be open for prosecutors to file detainers on the least serious charge pending against a prisoner and then proceed on numerous other more serious warrants after the defendant is within the

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Mauro, 436 U.S. 340 (1978), it is not at all clear that this ancient writ has any federally-recognized analog when two states are involved. In any event, here, the IAD was used—and used incorrectly—to the detriment of both the Michigan authorities and the prisoner.

jurisdiction, without concern for the protections offered by the IAD." *People* v. *Browning*, 108 Mich. App. 281, 295, 310 N.W.2d 365, 372 (1981).

The Indiana Court of Appeals in its opinion and the State of Indiana in its Brief In Opposition to Petition for Writ of Certiorari simply did not acknowledge the important federal obligation to the other signatory states which Indiana has undertaken under the IAD. Both have been content to construe the non-compli. nce with requirements of the IAD as an "irregularity" (Brief in Opposition 7) in "statutory procedural rules" (*id.* at 8).

It is this failure to appreciate the significance of the federal responsibility at stake in the administration of the IAD which has precipitated the error of the Indiana Court of Appeals. The Court cited in support of its position this Court's holdings in *Frisbie* v. *Collins*, 342 U.S. 519 (1952) and *Ker* v. *Illinois*, 119 U.S. 436 (1886). *Ramirez* v. *State*, 455 N.E.2d. 609, 613 (Ind. Ct. App. 1983). In those cases, the Court held, in essence, that the state was not deprived of its authority to exercise criminal jurisdiction over a defendant simply because the defendant had been forcibly abducted in another state and brought within the court's jurisdiction against his will.

While *Frisbie* and *Ker* may still represent, as a general proposition, minimal acceptable conduct under our constitutional framework[30], the States of the Union, by their agreement to adhere to the IAD, have agreed that such conduct is not acceptable when the integrity of another state's penal system is at issue. Here, a higher, more cooperative way of doing business is now required of a state. Other states expect adherence to that standard; the Congress, in return for its forbearance in instituting tighter federal control of the area, also expects it.

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[30] *See supra* note 21.

Rather than affirmatively assuming plenary control over this vital area of interstate relations, as it undoubtedly could have done, *Cuyler* v. *Adams*, 449 U.S. 433, 442 n.10 (1981), Congress decided to leave the substance of the arrangement to the states. Yet, there remained a very important federal interest in seeing that the arrangement works. Congress, by consenting to this arrangement—and by continuing to permit the arrangement rather than subjecting the area to federal control—made it clear that there is an important and continuing federal interest in adherence to the terms of the compact. As Justice Jackson put it in *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 36 (1951) (Jackson, J., concurring):

> Estoppel is not often to be invoked against a government. But West Virginia assumed a contractual obligation with equals by permission of another government that is sovereign in the field. After Congress and sister States had been induced to alter their positions and bind themselves to terms of a covenant, West Virginia should be estopped from repudiating her act. For this reason, I consider that whatever interpretation she may put on the generalities of her Constitution, she is bound by the Compact.

In short, we submit that the Court of Appeals of Indiana did not adequately take into account the federal duty of interstate cooperation and, consequently, it erred in treating the requirements of the IAD as if they were matters of state procedural law. Indiana's obligation to the other states of the Union require that the judgment be reversed.

For the foregoing reasons, the petitioner respectfully requests that the judgment of the Court of Appeals of Indiana be reversed.

Respectfully submitted,

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APPENDIX A: INTERSTATE AGREEMENT ON DETAINERS (Indiana Code § 35-33-10-4)

35-33-10-4 Agreement on detainers; defendants confined in other jurisdictions of United States

Sec. 4 Securing attendance of defendants confined as prisoners in institutions of other jurisdictions of the United States—Agreement on detainers.

Text of the Agreement of Detainers

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article 2

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time he initiates a request for final disposi-

tion pursuant to Article 3 of this section or at the time that a request for custody or availability is initiated pursuant to Article 4 hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article 3 or Article 4 hereof.

Article 3

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, information or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance

with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article 4

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article 5(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty (30) days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody of availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty (120) days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article 5(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article 5

(a) In response to a request made under Article 3 or Article 4 hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article 3 of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article 3 or Article 4 hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivision, as to the payment of costs, or responsibilities therefor.

Article 6

(a) In determining the duration and expiration dates of the time periods provided in Articles 3 and 4 of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article 7

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively

the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article 8

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article 9

1. This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The Phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, departments, agencies, officers and employees of this state and its political subdivision are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate hereof whenever so required by the operation of the agreement on detainers.

6. The governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the power conferred upon such person by Article 7 of the agreement on detainers.

7. In order to implement Article 4(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty (30) days, and to contest the legality of his delivery. *As added by Acts 1981, P.L. 298, SEC.2.*

APPENDIX B: INTERSTATE AGREEMENT ON DETAINERS (Previous Codification: Indiana Code § 35-2.1-2-4)

35-2.1-2-4 Securing attendance of defendants confined as prisoners in institutions of other jurisdictions of the United States; agreement on detainers

Sec. 4 Securing attendance of defendants confined as prisoners in institutions of other jurisdictions of the United States—Agreement on detainers. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

Text of the Agreement of Detainers

The contracting states solemnly agree that:

Article 1

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article 2

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the

United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time he initiates a request for final disposition pursuant to Article 3 of this section or at the time that a request for custody or availability is initiated pursuant to Article 4 hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article 3 or Article 4 hereof.

Article 3

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other

official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, information or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state.

The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article 4

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article 5(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty (30) days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody of availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prison-

er. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty (120) days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article 5(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article 5

(a) In response to a request made under Article 3 or Article 4 hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article 3 of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the

place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article 3 or Article 4 hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of[1] complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

---

[1] So in enrolled Indiana Code. Probably should read "or".

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivision, as to the payment of costs, or responsibilities therefor.

Article 6

(a) In determining the duration and expiration dates of the time periods provided in Articles 3 and 4 of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article 7

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article 8

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article 9

1. This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, department, agencies, officers and employees of this state and its political subdivision are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

5. It shall be unlawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate hereof whenever so required by the operation of the agreement on detainers.

6. The governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article 7 of the agreement on detainers.

7. In order to implement Article 4(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty (30) days, and to contest the legality of his delivery.

Office-Supreme Court, U.S.
FILED
JAN 31 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-5059 (1)

In the Supreme Court of the United States

OCTOBER TERM, 1984

PATRICK RAMIREZ, PETITIONER

v.

STATE OF INDIANA, RESPONDENT

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF INDIANA

JOINT APPENDIX

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(Appointed by this Court)
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Counsel for Respondent

PETITION FOR CERTIORARI FILED JULY 13, 1984
CERTIORARI GRANTED OCTOBER 29, 1984

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RELEVANT DOCKET ENTRIES

Date	Entry
3/20/79	Information in Cause 424 filed
4/5/79	Waiver of Arraignment in Cause 424; entry of not guilty plea
11/16/79	Recommendation for Plea Bargain filed in Cause 424
12/14/79	Court rejects Recommendation for Plea Bargain in Cause 424
2/19/80	Information filed in Cause 470
7/23/81	Recommendation for Plea Bargain in Cause 424 filed
8/17/81	Motion to Withdraw Plea Bargain in Cause 424
1/18/82	Motion to Dismiss Cause 424
1/25/82	Hearing on Motion to Dismiss
1/26/82	Motion to Dismiss denied
5/14/82	Petitioner pleads Guilty in Cause 470
5/17/82	Verdict delivered in Cause 424
6/8/82	Petitioner sentenced in Cause 424 and 470
8/10/82	Motion to Correct Errors
10/26/82	Motion to Correct Errors denied
10/26/83	Opinion of Court of Appeals of Indiana
2/1/84	Rehearing Denied in Court of Appeals of Indiana
5/11/84	Petition to Transfer to Court of Appeals of Indiana denied
7/13/84	Petition for Certiorari filed
10/29/84	Petition for Certiorari granted
11/13/84	Motion for Appointment of Counsel granted

CAUSE 424—INFORMATION DATED MARCH 20, 1979, CHARGING PETITIONER WITH DEALING IN SCHEDULE IV CONTROLLED SUBSTANCE. (7-17)

PLEAS AND PROCEEDINGS had before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the Honorable Don P. Button, Pro Tempore of the Howard Superior II Court, the Honorable Edward S. Mahoney, Judge Pro Tempore of the Howard Superior II Court, and the Honorable L. Owen Bolinger, Judge Pro Tempore of the Howard Superior II Court, at a term thereof began and held at the Courthouse in the City of Kokomo, County of Howard, and State of Indiana, which pleas and proceedings were had in the cause entitled as follows:

STATE OF INDIANA

vs.

PATRICK RAMIREZ

BE IT FURTHER REMEMBERED that heretofore, to-wit on the 20th day of March, 1979 before the Honorable Don P. Button, Judge Pro Tempore of the Howard Superior II Court, the following proceedings were had.

Comes now Curtis Welke, Deputy Prosecuting Attorney in and for the 62nd Judicial Circuit of Howard County, State of Indiana, and files Information and Affidavit for Probable Cause charging the defendant with Dealing in Schedule IV Controlled Substance, which Information and Affidavit are in words and figures as follows:

(H.I.)

SEE MICROFILM SUPERIOR COURT DIVISION II CRIMINAL CAUSE #424 FOR INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

[Filed Apr. 14, 1983]

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

No. 424

STATE OF INDIANA

vs

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

COUNT I

INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

Before me, Notary Public, Prosecuting Attorney came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 28th day of January, 1979, at the county of Howard, and State of Indiana, PAT RAMERIZ late of said county, did then and there knowingly or intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: Diazepam then and there being affiant is informed and believes, contrary to the form of

the statutes, to-wit: I.C. 35-48-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Gary Ashenfelter
Affiant

Subscribed and sworn to before me this 20th day of March, 1979.

/s/ Curtis C. Welke
Notary Public
Deputy Prosecuting Attorney

My Commission Expires: 4-2-82

Approved by me, /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

No. 424

STATE OF INDIANA

vs

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

COUNT II

INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

Before me, Notary Public, Prosecuting Attorney came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 9th day of March, 1979, at the county of Howard, and State of Indiana, PAT RAMERIZ late of said county, did then and there knowingly or intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: Diazepam then and there being affiant is informed and believes, contrary to the form of

the statutes, to-wit: I.C. 35-48-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Gary Ashenfelter
Affiant

Subscribed and sworn to before me this 20th day of March, 1979.

/s/ Curtis C. Welke
CURTIS C. WELKE
Notary Public
Deputy Prosecuting Attorney

My Commission Expires: 4-2-82

[Filed Apr. 14, 1983]

Approved by me, /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

WITNESSES:

1. Lt. Gary Ashenfelter
KPD
Kokomo, Indiana 46901

2. Sgt. Jack Adams
KPD
Kokomo, Indiana 46901

3. Lt. John Hurlock
KPD
Kokomo, Indiana 46901

4. Sgt. John Cardwell
KPD
Kokomo, Indiana 46901

5. Sgt. Mike Cody
KPD
Kokomo, Indiana 46901

6. Sgt. David Minor
KPD
Kokomo, Indiana 46901

7. K8-169
KPD
Kokomo, In.

8. Sgt. Charles Hackett
KPD
Kokomo, Indiana 46901

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

No. 424

STATE OF INDIANA

vs

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

COUNT III

INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

Before me, Notary Public, Prosecuting Attorney came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 12 day of March, 1979, at the county of Howard, and State of Indiana, PAT RAMERIZ late of said county, did then and there knowingly or intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: Diazepam then and there being affiant is informed and believes, contrary to the form of

the statutes, to-wit: I.C. 35-48-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Gary Ashenfelter
Affiant

Subscribed and sworn to before me this 20th day of March, 1979.

/s/ Curtis C. Welke
CURTIS C. WELKE
Notary Public
Deputy Prosecuting Attorney

My Commission Expires: 4-2-82

[Filed Apr. 14, 1983]

Approved by me, /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

WITNESSES:

1. Lt. Gary Ashenfelter
KPD
Kokomo, Indiana 46901

2. Sgt. Jack Adams
KPD
Kokomo, Indiana 46901

3. Lt. John Hurlock
KPD
Kokomo, Indiana 46901

4. Sgt. John Cardwell
KPD
Kokomo, Indiana 46901

5. Sgt. Mike Cody
KPD
Kokomo, Indiana 46901

6. Sgt. David Minor
KPD
Kokomo, Indiana 46901

7. K8-169
KPD
Kokomo, In.

8. Sgt. Charles Hackett
KPD
Kokomo, Indiana 46901

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

Cause Number 424

STATE OF INDIANA

—vs—

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

AFFIDAVIT FOR PROBABLE CAUSE

Bruce Hamlin swears or affirms that he believes and has good cause to believe that:

I am a resident of and am employed in Howard County, Indiana. I am twenty-six years of age.

On January 28, 1979, at approximately 12:15 P.M., I purchased from Pat Rameriz 28 tablets represented by Pat Rameriz to be Quaaludes. I paid him $56.00 for these tablets. This transaction took place in my apartment at 1324½ North Lafountain Street, Kokomo, Howard County, Indiana. I have known Pat Rameriz for about six or seven years.

The next day, on January 29, 1979, I went to the CID office in Kokomo and turned these 28 tablets over to Detective Sgt. John Cardwell and Lt. Gary Ashenfelter.

On March 9, 1979 approximately 11:15 P.M., I was at the residence of Pat Rameriz, 604 West Jefferson Street, Kokomo, Indiana. At this time Pat Rameriz gave to me 50 individually wrapped tablets in aluminum foil marked Rorer De Mexico Quaaludes 300. I then left Pat Rameriz's house and drove to an alley off of Buckeye Street near its intersection with Superior Avenue. At this location I met Sgt Dave Minor and Lt. John Hurlock. These 50 tablets were given to Lt. Hurlock at that time.

On March 12, 1979 at approximately 9:10 P.M. Pat Rameriz gave me 50 individually wrapped tablets in aluminum foil, marked Rorer DE Mexico Quaalude 300. This happened at the residence of Pat Rameriz located at 604 West Jefferson Street, Kokomo, Indiana. After receiving these tablets I left Pat Rameriz's house and drove to the alley behind the CID office. As soon as I got out of my car I handed these 50 tablets to Lt. Gary Ashenfelter.

Further Affiant saith not.

/s/ Bruce W. Hamlin
BRUCE HAMLIN
Affiant

Subscribed and sworn to before me this 20th day of March, 1979

/s/ Curtis C. Welke
CURTIS C. WELKE
Deputy Prosecuting Attorney
Notary Public

My Commission Expires 4-2-82

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

Cause Number 424

STATE OF INDIANA

—vs—

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

AFFIDAVIT FOR PROBABLE CAUSE

Lt. Gary Ashenfelter swears or affirms that he believes and has good cause to believe that:

Affiant is an officer of the Kokomo Police Department, Kokomo, Indiana.

On January 29, 1979 I received from Bruce Hamlin 28 individually wrapped tablets marked Rorer De Mexico Quaaludes 300. I delivered these to the Indiana State Police Laboratory for testing, and a preliminary test showed the tablets contained Diazepam, a Schedule IV drug.

On March 12, 1979 I received from John Hurlock 50 individually wrapped tablets marked Rorer De Mexico Quaaludes 300. At a later time I performed a field test for barbiturates on one of these tablets and received a positive result for the presence of barbiturates.

On March 12, 1979 at approximately 9:00 P.M., Sgt. Cardwell, Sgt. Adams and I were with Bruce Hamlin. I performed a search of Bruce Hamlin and the car he was driving. Bruce Hamlin informed us he was to meet Pat Rameriz at his (Rameriz's) house to obtain 50 quaaludes that Rameriz wanted Hamlin to sell. Sgt. Cardwell, Sgt. Adams and I then followed Bruce Hamlin to the rear of 604 West Jefferson, the home of Pat Rameriz. A short time later Pat Rameriz came out of the house and walked up to Hamlin's car. At approximately 9:10 P.M. Pat Rameriz went back into the house. Hamlin then drove away. We three officers followed him to the alley behind the CID office and as soon as Hamlin got out of the car he handed me 50 individually wrapped tablets. Each tablet was marked on the outside Rorer De Mexico Quaaludes 300. I later field tested one of the tablets and received a positive result for the presence of barbiturates.

Further Affiant saith not.

/s/ Gary Ashenfelter
GARY ASHENFELTER
Affiant

Subscribed and sworn to before me this 20th day of March, 1979

/s/ Curtis C. Welke
Deputy Prosecuting Attorney
Notary Public

My Commission Expires 4-2-82

Court having examined said Affidavit and being well advised in the premises thereof now finds that there is

probable cause for the issuance of an arrest warrant for the defendant for the Defendant for the offense charged.

Warrant ordered.

Court now sets bond in the amount of Three Thousand ($3,000.00) Dollars for each Count.

Defendant is charged with three (3) counts.

[Filed Apr. 14, 1983]

$3,000.00 Bond—Each Count

BENCH WARRANT
SUPERIOR COURT II

No. 424

STATE OF INDIANA

vs.

PAT RAMERIZ

[Filed Apr. 22, 1979]

Fred G. Osborne
Prosecuting Attorney

STATE OF INDIANA,
HOWARD COUNTY, SS:

—H.C.S.D.—

The State of Indiana to the Sheriff of Howard County, Greeting:

You are hereby commanded to arrest Pat Rameriz if he may be found in your bailiwick, so that you have his body before the Judge of Superior Court II of Howard County, instanter, and then and there to answer the State of Indiana on a charge of Dealing in a Schedule IV Controlled Substance—Three counts and abide the order of the Court thereon, and return this writ.

WITNESS, The Clerk and Seal of said Court this 20th day of March, 1979.

/s/ Clifford Linebach
Clerk

SHERIFF'S RETURN

THIS WRIT CAME TO HAND MARCH 20, 1979 SERVED AS COMMANDED BY ARRESTING PAT RAMERIZ

/s/ Robert Sargent
Sheriff

DONE 3-20 1979

TEMPLIN-HURLOCK
Deputy

CAUSE 424—WAIVER OF ARRAIGNMENT; ENTRY OF NOT GUILTY PLEA DATED APRIL 5, 1979. (21)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 5th day of April, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now State of Indiana and appears in open Court by Mr. Dennis Parry.

Comes now the defendant and appears in open Court in person and with counsel, Charles Scruggs.

Defendant's counsel requests thirty (30) days to file motions.

The Court having examined such request and being well advised in the premises thereof now grants such request.

Defendant moves to waive reading of Information and formal arraignment.

Court so waives.

Defendant now pleads not guilty and requests trial by jury.

Court now sets jury trial at 9:30 A.M. August 23, 1979.

* * * *

CAUSE 424—ARRAIGNMENT HEARING APRIL 5, 1979 CHARGING PETITIONER WITH THREE COUNTS OF DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE. (460-464)

JUDGE: This is criminal cause number 424, State of Indiana versus Pat Ramirez. You're Pat Ramirez?

A. Yes sir.

JUDGE: All right, the record will show that the State is represented by Mr. Dennis Parry, and the Defendant appears in person and by counsel, Mr. Charles Scruggs. Mr. Scruggs, this matter was set on the card for arraignment this afternoon, are you ready to proceed?

MR. SCRUGGS: Yes, Your Honor, subject to the court granting me thirty days from today to file any motions addressed to the Information or any motions which are required to be filed before arraignment?

MR. PARRY: State has no objection to that.

JUDGE: Then your, subject to that being granted which will be granted you're ready to proceed?

MR. SCRUGGS: Yes, Judge. And the Defendant moves to waive reading of the Informations, three counts. He has read each of the counts. He knows and understands what he's charged with. He knows the possible penalties.

JUDGE: And rights at trial?

MR. SCRUGGS: Yes, and we'd advise the court he intends to plead not guilty and request trial by jury.

JUDGE: All right, any objection to that, Mr. Parry?

MR. PARRY: No sir.

JUDGE: All right, Mr. Ramirez, you're willing to waive formal arraignment and waive reading of the charges at this time, is that right?

A. Yes sir.

JUDGE: And you feel that you're ready to enter a plea now?

A. Yes sir.

JUDGE: Court will indicate that formal arraignment is waived; reading of the Information is waived. Court will ask you, Mr. Ramirez, how you plead to Count I, Information for Dealing in a Schedule IV Controlled Substance?

A. Not guilty, I mean, not guilty.

JUDGE: Count II, Information for Dealing in a Scheduled IV Controlled Substance?

A. Not guilty.

JUDGE: Count III, Information for Dealing in a Schedule IV Controlled Substance?

A. Not guilty.

JUDGE: All right, now there's a request for jury trial, is that right?

MR. SCRUGGS: Yes, Judge.

JUDGE: August 23rd?

MR. SCRUGGS: That's fine.

JUDGE: All right, we'll set this matter for jury trial, August 23, 9:30. You say that you're willing to have 427 and 428 arraigned today as well?

MR. SCRUGGS: Yes, Your Honor.

JUDGE: And you're entering your appearance?

MR. SCRUGGS: Yes.

JUDGE: All right, show that Mr. Scruggs enters his appearance in 427 and 428 for the defendant. We'll show in both cases that Mr. Parry appears for the State, Defendant appears in person and with counsel, Mr. Charles Scruggs. Now, Mr. Scruggs, you're willing to go forward with arraignment today on the same proviso as this other case?

MR. SCRUGGS: Yes, with the same record, I'd like thirty days in which to file any prearraignment motions to both of the charges. And we will waive formal arraignment on both charges, waive reading of the Information. He knows and understands what he's charged with and he knows his constitutional rights. We will plead not guilty and request trial by jury.

JUDGE: Mr. Parry, any objections to the thirty-day motions?

MR. PARRY: No sir, and no objections to waiving the formal arraignment.

JUDGE: All right, we'll show that Mr. Scruggs is given thirty days to file his motion. Mr. Ramirez, on both 427 and 428, you're willing to waive formal arraignment and formal reading of the charges, is that right?

A. Yes.

JUDGE: All right, on both cases show that formal reading is waived, reading of the charges is waived. In 427 you're ready to enter your plea then at this time, is that right?

A. Yes.

JUDGE: 427, the charge is an Information for Conspiracy to Commit a Felony. How do you plead to that?

A. Not guilty.

JUDGE: All right, and 428, it's an Information for Conspiracy to Commit Prostitution, how do you plead to that?

A. Not guilty.

JUDGE: Ok, and you're requesting jury trials?

A. Yes sir.

JUDGE: I take it we're talking about two?

MR. PARRY: Yes sir, we have different witnesses.

JUDGE: We'll take 427 first. August 30 all right?

MR. SCRUGGS: Yes.

JUDGE: All right, we'll set 427 for jury trial August 30th at 9:30. And then 428, September 13th. All right, we'll set 428 for jury trial September 13th at 9:30. Mr. Ramirez, it's necessary that if you change your job or place of residence or telephone number that you let Mr. Scruggs know so that he can keep in contact.

A. Yes sir.

JUDGE: All right, that's all.

AND NO FURTHER EVIDENCE WAS PRESENTED IN THIS CAUSE ON THIS DATE.

CAUSE NO. 424—MOTION DATED APRIL 18, 1979, FOR REDUCTION OF BOND.

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 18th day of April, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now Curtis Welke and appears in open Court for the State of Indiana.

Comes now the Defendant and appears in open Court in person and with counsel, Charles Scruggs.

Said cause is now submitted to the Court.

Evidence is heard on Motion for Reduction of Bond filed heretofore herein.

Court having heard evidence and being well advised in the premises thereof now grants Motion and reduces bond to Three Thousand ($3,000.00).

* * * *

CAUSE 424—RECOMMENDATION FOR PLEA BARGAIN FILED. NOVEMBER 16, 1979. (36-38)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 16th day of November, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now State of Indiana and appears in open Court by Curtis Welke.

Comes now the defendant and appears in open Court in person and with counsel, Charles Scruggs.

Recommendation for Plea Bargain is filed in open Court, which Recommendation is in words and figures as follows: (H.I.)

Defendant now moves to withdraw plea of not guilty in Cause No. 424 to Count I and Cause No. 427 and enter a plea of guilty to those counts pursuant to Recommendation of Plea Bargain filed this date.

Information is read to Defendant on both Cause No. 424 and 427.

Statutes read to the Defendant.

Potential penalties read to the Defendant.

Defendant is advised of rights to trial and counsel.

Defendant advises no threats or promises have been made to secure a plea.

Defendant is advised of rights waived by plea of guilty.

Court now refers matter to the probation department for pre-sentence investigation report.

Court now sets ruling at 1:30 P.M., December 6, 1979.

* * * *

[Filed Apr. 14, 1983]

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Nov. 16, 1979]

RECOMMENDATION OF PLEA BARGAIN

Comes now the State of Indiana by Deputy Prosecuting Attorney, the Defendant, Patrick Ramirez, and counsel for Defendant, Charles H. Scruggs, and files Recommendation of Plea Bargain as follows, to-wit:

1. The Prosecutor anticipates that the Defendant, Patrick Ramirez, intends to enter a plea of guilty to, Dealing in a Schedule IV Controlled Substance as charged in this cause, and guilty to Conspiracy to Commit Theft as charged in cause #427 in this Court.

2. That said recommendation is filed with the Court prior to entry of above plea.

3. That said recommendation is as follows:

a. Cause No. 428 in this Court be dismissed;

b. That the defendant be sentenced to the Indiana Department of Corrections for five (5) years on Cause

No. 424 and two (2) years on Cause No. 427, said sentences to run concurrently;

c. that both of the above sentences be suspended and the defendant be placed on probation for a period of four (4) years;

d. that as a special condition of probation, the defendant agrees to waive his constitutional rights against search and seizure as to the probation department;

4. That Defendant states to the Court that said recommendation is made of his own free and voluntary act and that no one has threatened or promised him anything other than that contained herein. Further that Defendant fully understands the consequences of this recommendation.

5. The Defendant has been advised and understands that this Court is not bound by this recommendation, however the Defendant also understands that if this recommendation is rejected by the Court, it must be so rejected before the case is tried.

STATE OF INDIANA BY:

/s/ Curtis C. Welke
Deputy Prosecuting Attorney
CURTIS C. WELKE

/s/ Pat Ramirez
Defendant
PATRICK RAMIREZ

/s/ Charles H. Scruggs
Attorney for Defendant
CHARLES H. SCRUGGS

[Filed Apr. 14, 1983]

CAUSE 424—HEARING NOVEMBER 16, 1979, ON RECOMMENDATION FOR PLEA BARGAIN. (475-490)

JUDGE: All right, this is Cause No. 424, State of Indiana versus Patrick Ramirez, and 427, State versus Patrick Ramirez. The record will show that Mr. Welke appears for the State. Defendant appears in person and by his counsel, Mr. Charles Scruggs. The record will show the Recommendation of Plea Bargain has been filed. Mr. Scruggs, do you have motions to make?

MR. SCRUGGS: Yes, Your Honor, the Defendant moves to withdraw his pleas of not guilty in Cause No. 424 and to Cause No. 427, and specifically Count I of Cause No. 424, and for leave of court to enter pleas of guilty on those counts pursuant to a written Recommendation of Plea Bargain which has been filed with the court this morning.

JUDGE: All right, is that what you want to do, Mr. Ramirez?

A. Yes sir.

JUDGE: All right, we're going to have to go through some reading and explaining for the record here because I think that these were all waived at one time. Count I of 424 reads as follows, "that on or about the 28th day of January, 1979, at the County of Howard, State of Indiana, Pat Ramirez, late of said county, did then and there knowingly and intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: how do you pronounce that gentlemen? Diazepan. Then and there being affiant is informed and believes contrary to the form of the statutes, to-wit: IC 35-38-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana." You've heard me read that Count I in 424, Mr. Ramirez?

A. Yes sir.

JUDGE: 424 is a Conspiracy to Commit A Felony. That Information reads as follows: "That on or about the 15th day of March, 1979, at the County of Howard, and State of Indiana, Patrick Ramirez with intent to commit a felony to-wit: theft, did agree with Bruce Hamlin to commit said felony, namely theft, and that said Patrick Ramirez did perform an overt act, to-wit: take the stolen property, conceal the same on his premises in furtherance of the agreement then and there being as affiant is informed and believes contrary to the form of the statutes, to-wit: IC 35-41-5-2, in such cases made and provided and against the peace and dignity of the State of Indiana." Signed by an affiant, notary and approved by the prosecutor. You've heard me read that information?

A. Yes sir.

JUDGE: All right, the dealing in controlled substances act reads as follows: "A person who (1) knowingly or intentionally manufactures or delivers a controlled substance pure or adulterated classified in Schedule IV, or (2) possesses with intent to manufacture or deliver a controlled substance, pure or adulterated, classified in Schedule IV, commits dealing in a Schedule IV Controlled Substances, a Class C felony. However, the offense is a Class B felony if the person delivered the substance to a person under eighteen years of age at least three years his junior." In 427, we're dealing with conspiracy to commit a felony. The conspiracy statute, "A person conspires to commit a felony when with intent to commit the felony, he agrees with another person to commit a felony. A conspiracy to commit a felony is a felony of the same class as the underlying felony. However, a conspiracy to commit murder is a Class A felony. B. The state must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement. C. It is no defense that the accused person with whom he alleged to have conspired, (1) has not been prosecuted, (2) has not been convicted (3) has been acquitted, (4) has been convicted of a dif-

ferent crime, (5) can not be prosecuted for any reason or, lacked the capacity to commit the crime." So, we're talking about a D here, is that right?

MR. SCRUGGS: Right.

JUDGE: The Class C felony statute for penalty reads as follows: "A person who commits a Class C felony shall be imprisoned for a fixed term of five years with not more than three years added for aggravating circumstances or not more than three years subtracted for mitigating circumstances. In addition, he may be fined not more than $10,000." That is for the Dealing in Schedule IV Controlled Substances charge for 424. The D felony penalty statute, "A person who commits a Class D felony shall be imprisoned for a fixed term of two years with not more than two years added for aggravating circumstances. In addition, he may be fined not more than $10,000. B. Not withstanding sub-section A of this section, if a person has committed a Class D felony, the court may enter judgment on conviction of a Class A misdemeanor and sentence accordingly. The court shall enter in the record in detail the reason for its' action whenever it exercises the power granted in this sub-section The Class A misdemeanor penalty statute reads as follows: "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one year. In addition he may be fined not more than $5,000. You've heard me read these statutes pertaining to the crimes involved here and the penalties? Mr. Ramirez?

A. Yes sir.

JUDGE: All right, do you understand that although you're agreeing to plead guilty on this Recommendation of Plea Bargain, that you don't have to plead guilty? You may have jury trials on these matters? Do you understand that?

A. Yes.

JUDGE: You have a right to a speedy public trial by court or by jury in the county in which the state alleges these matters took place?

A. Yes.

JUDGE: You understand that unless we differentiate here, we're talking about both of these cases now?

A. Yes.

JUDGE: You understand that you have right to an attorney and you and your attorney have a right to be in court when this matter is heard?

A. Yes.

JUDGE: You understand that you have a right to call witnesses at any hearing or trial in either of these cases and have them subpoeaned and have the Sheriff serve the subpoena and require the people to come in and testify on your behalf?

A. Yes sir.

JUDGE: You understand that you have a right to confront all witnesses brought by the state in these matters? Watch them, listen to them testify and cross-examine them if you so desire?

A. Yes sir.

JUDGE: You understand that you have a right to file a motion for change of venue from the county and you have a right to file a motion for a change of venue from the judge, do you understand that?

A. Yes.

JUDGE: Do you understand that if you're convicted in these matters, you'd have a right to appeal to a higher court at Indianapolis with hopes of getting your conviction reversed and getting a new trial?

A. Yes.

JUDGE: You understand in these cases Mr. Ramirez, you're presumed to be innocent at this time? Do you understand you have the presumption of innocence?

A. Yes.

JUDGE: And the only way that can be overcome is for the state to prove you guilty beyond a reasonable doubt?

A. Yes.

JUDGE: And that means if there's a jury, the state would have to so convince every member of that jury of

your guilt beyond a reasonable doubt before you could be found guilty?

A. Yes.

JUDGE: And if there's no jury, the state would have to so convince the Judge of your guilt beyond a reasonable doubt, do you understand that?

A. Yes.

JUDGE: And if there is a jury trial in any of these cases, you would have twelve people selected from our jury list at the time of the trial to be on your jury, do you understand that?

A. Yes sir.

JUDGE: And selecting these twelve people would be accomplished in a process joined in by you, your attorney, the prosecutor and the Judge, do you understand that?

A. Yes sir.

JUDGE: Did anybody threaten you, harm you or injure you in any way to get you to change your plea?

A. No sir.

JUDGE: Did anybody promise you anything more than what is contained in the Recommendation for Plea Bargain to get you to change your plea?

A. No sir.

JUDGE: With reference to the plea bargain, you understand that the court is not a part of this agreement between you and your attorney and the prosecutor right now?

A. Yes sir.

JUDGE: This is your signature? On the Recommendation of Plea Bargain?

A. Yes, it is.

JUDGE: Did you read the Recommendation of Plea Bargain before you signed it?

A. Yes sir.

JUDGE: And did you talk to your attorney about it?

A. I did.

JUDGE: You think you understand it?

A. Yes sir.

JUDGE: It says you intend to plead guilty to Count I. I'm not sure it says that, but that's what your attorney says, is that your understanding?

A. Yes.

MR. WELKE: Yes, Judge.

JUDGE: All right, Count I in 424 and plead guilty in 427 and 428 would be dismissed. You'd get 5 years in 424, and 2 years in 427, sentences to run consecutively.

MR. SCRUGGS: Concurrently, Your Honor.

JUDGE: Right, concurrently, together. Sentences to be suspended. You'd be placed on probation for four years. Do you understand that? That's your understanding of what it is?

A. Yes.

JUDGE: And in addition you would agree to waive your constitutional right against search and seizure as to the probation department. That's what you want to do in this case, is that right?

A. Yes sir.

JUDGE: You understand that what we'd be doing here in referring you and the Recommendation of Plea Bargain to the probation office, and Mr. Mills is here from that office today, and he would probably talk to you or somebody else from the office would about these cases. About yourself, your interests, your education, your work, your family, any past criminal record, a lot of other things, write up a report and send it to me. From that report and from this case file, I would decide whether or not to accept the plea bargain, do you understand that so far?

A. Yes sir.

JUDGE: If the plea bargain is accepted, you will be sentenced according to the agreement, do you understand that?

A. Yes.

JUDGE: If it's not accepted, you wouldn't be held to your intention to plead guilty, do you understand that?

A. Yes sir.

JUDGE: From me reading these statutes on penalties, you understand the potential penalties?

A. Yes sir.

JUDGE: You understand that if we were to proceed along the terms of this plea bargain, you'd be placed on probation for four years, and you would have to live under some rules of probation, you understand that?

A. Yes sir.

JUDGE: And if you didn't do it properly, you would be subject to the prosecutor or the probation office or the court requesting a hearing on revocation of probation. And if you lost that you might have to serve these two sentences, the five years and the two years, concurrently, do you understand that?

A. Yes sir.

JUDGE: Now, if you plead guilty you understand that you're not going to have a trial, either by court or by jury, you're waiving a trial, you understand that?

A. Yes sir.

JUDGE: And if you're not going to have a trial, you're waiving all your rights that you would have at trial by pleading guilty, do you understand that?

A. Yes.

JUDGE: You wouldn't have the opportunity to call witnesses in to testify and have them subpoeaned and require them to come in and testify, you understand that, if you plead guilty?

A. Un huh.

JUDGE: You understand that you and your attorney would not have a right to confront the state's witnesses at trial, watch them, listen to them and cross-examine them, if you plead guilty, do you understand that?

A. Yes.

JUDGE: You understand if you plead guilty, you're waiving your presumption of innocence? You're not going to have that presumption if you plead guilty?

A. Yes.

JUDGE: You understand that you would be waiving your right to appeal any error that might occur at trial if you plead guilty?

A. Yes.

JUDGE: You understand you're waiving your rights such as they are today to change of venue from the county and from the judge if you plead guilty?

A. Yes.

JUDGE: You understand that the state is not going to have to prove you guilty beyond a reasonable doubt if you plead guilty?

A. Yes.

JUDGE: You understand that you would be admitting to the allegations contained in Count I of Cause No. 424 and for the allegations contained in 427 if you plead guilty?

A. Yes.

JUDGE: And you are admitting to those facts and allegations, is that right?

A. Yes.

JUDGE: How far did you go in school, Mr. Ramirez?

A. I gradudated.

JUDGE: High school?

A. Yes.

JUDGE: So you understand English and you're able to read and write it then?

A. Yes.

JUDGE: Are you satisfied with Mr. Scruggs representation of you to date?

A. Yes.

JUDGE: You understand that if we have a trial or trials of these matters that you have, you don't have to testify, you have a right to remain silent, you understand that?

A. Yes.

JUDGE: And if you plead guilty, you're waiving that right to remain silent because in effect you're saying I did it, you don't have to prove it, you understand that?

A. Yes.

JUDGE: Do you have any questions, Mr. Ramirez, about any of these things that we've mentioned or anything else about this case that you would like to ask your attorney first or me?

A. No.

JUDGE: No, all right. Mr. Welke, do you want any other questions asked at this time pertaining to rights?

MR. WELKE: No sir.

JUDGE: Mr. Scruggs, do you know of any reason now that Mr. Ramirez should not proceed with this Recommendation of Plea Bargain?

MR. SCRUGGS: No, Your Honor.

JUDGE: We'll refer the Recommendation of Plea Bargain then to the probation office and ask for a presentence investigation report and take the request for change of plea, you also requested to withdraw your request for jury trial, I assume?

MR. SCRUGGS: Yes, Judge.

JUDGE: We'll take that under advisement, take the Recommendation of Plea Bargain request under advisement set those matters to-ether with potential sentencing for December 6th at 1:30, is that acceptable?

MR. SCRUGGS: Yes, that's fine. 1:30?

JUDGE: Yes. Ok, that's all, thank you.

AND NO FURTHER EVIDENCE WAS PRESENTED IN THIS CAUSE ON THIS DATE.

CAUSE 424—COURT REJECTS RECOMMENDATION FOR PLEA BARGAIN; REQUEST FOR JURY TRIAL. DECEMBER 14, 1979. (139)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 14th day of December, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now State of Indiana and appears in open Court by Curtis Welke.

Comes now the defendant and appears in open Court in person and with Charles Scruggs.

Joanna Keller of the Adult Probation Department is present.

Court now finds that the Recommendation of Plea Bargain filed heretofore herein should be and is hereby rejected by the Court.

Defendant now requests jury trial.

Court now sets jury trial at 9:30 A.M., March 6, 1980.

* * * *

CAUSE 424—HEARING DECEMBER 14, 1979, WHEREIN COURT REJECTS PLEA BARGAIN. (495-498)

JUDGE: All right, in criminal causes 424 and 427, State versus Patrick Ramirez, the record will show Mr. Curtis Welke appears for the State. The defendant appears in person and his attorney, Mr. Charles Scruggs. The matter, and I also need to note that Mrs. Keller of the probation office has furnished the court with a presentence investigation report which the court has read and considered with reference to the recommendation of plea bargain which was filed in this case. The presentence investigation was submitted by Mr. Cox, and Mr. Cox can not recommend the plea bargain due to Mr. Ramirez's opinions and statements indicated to Mr. Cox about his guilt and hesitancy about signing the plea bargain and perhaps other reasons. Due to the presentence investigation report being as it is and due to the numerous charges here, the court finds that the plea bargain should be rejected and not accepted. Mr. Scruggs, do you have any motions to make at this time or do you wish to continue the matters to talk to your client and decide what you want to do?

MR. SCRUGGS: No, Your Honor, we're prepared to proceed and we would ask the court that these matters be set down for trial as soon as the court would have an opportunity to hear them. We are prepared to go ahead with trial. I think most of the discovery has been completed. I think I have just about everything I need.

JUDGE: All right, fine. Mr. Welke, I've got the two cards here, 424 and 427. The Recommendation of Plea Bargain also mentions 428 which I have pulled and have over to the side. I need your suggestion and Mr. Scruggs' suggestion on how many settings we need, if we need two or three, which do you want to set first?

MR. WELKE: I believe all three cause numbers would need different settings Your Honor. As far as preference

of timewise, they're all unrelated so it makes no difference to the State.

JUDGE: All right, fine. We'll set 424 first since it was filed first.

MR. SCRUGGS: I will be filing a Motion to Suppress the evidence in that cause, Your Honor, but that shouldn't interfere with the trial date.

JUDGE: 424?

MR. SCRUGGS: Right.

JUDGE: Generally speaking, do either one of you have a problem with a February setting?

MR. WELKE: State does not.

MR. SCRUGGS: No, Judge.

JUDGE: February 14.

MR. WELKE: Good.

MR. SCRUGGS: Judge, I'm going to be in Aspen that week.

JUDGE: Is that the northern district or the southern district?

MR. SCRUGGS: Western District.

JUDGE: Well, what about the 19th?

MR. WELKE: I have another setting on that date, Judge, it would be bad.

JUDGE: Ok. What about the 21st, is that any better?

MR. SCRUGGS: I've got a case in Anderson on the 21st, State versus Glen Williams.

JUDGE: March 6?

MR. SCRUGGS: March the 6th?

JUDGE: Yes sir. That's 424. March 20 on 427. Is that acceptable?

MR. SCRUGGS: Ok. Yes, it is.

JUDGE: Ok.

MR. SCRUGGS: Judge, why don't we withhold setting the other three cases pending the outcome of these two cases. I would think that after going through two ju-y trials, he might have cause for a change of venue from the county at that point anyway.

MR. WELKE: State would just as soon set a date, Judge, and cross that bridge when we come to it.

MR. SCRUGGS: That's all right with me.

JUDGE: Well, I've only got one other card here and I'm going to set that for the 27th of March, 428. Mr. Ramirez, if you change your address or your work or your telephone number, you let Mr. Scruggs know so if he needs to get in touch with you, he might have to talk to you and need to get ahold of you today, you know, rather than next week. So, he needs to know where you are. Ok, that's all.

AND NO FURTHER HEARING WAS CONDUCTED IN THIS CAUSE ON THIS DATE.

CAUSE 470—INFORMATION DATED FEBRUARY 19, 1980, FOR DEALING IN MARIJUANA. (235-236)

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT I

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant
SGT. JACK ADAMS

Subscribed and sworn to before me this 6th day of February, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT II

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant
SGT. JACK ADAMS

Subscribed and sworn to before me this 28th day of January, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me, /s/Curtis C. Welke, Deputy, Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

CAUSE 424—RECOMMENDATION FOR PLEA BARGAIN. JULY 23, 1981. (157-160)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 23rd day of July, 1981 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Recommendation for Plea Bargain filed, which recommendation is in words and figures as follows: (H.I.) (157-160)

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424

STATE OF INDIANA

vs

PATRICK RAMIREZ

RECOMMENDATION OF PLEA BARGAIN

Comes now the State of Indiana by Deputy Prosecuting Attorney, the Defendant, Patrick Ramirez, and counsel for Defendant, Jeffrey A. Lockwood, and files Recommendation of Plea Bargain as follows, to-wit:

1. The Prosecutor anticipates that the Defendant, Patrick Ramirez, intends to enter a plea of guilty to, Count I herein, Dealing in a Schedule IV Controlled Substance, a Class C felony.

2. That said recommendation is filed with the Court prior to entry of above plea.

3. That said recommendation is as follows:

a. Defendant will receive a sentence to the Indiana Department of Corrections for a period of five (5) years, committed.

b. Defendant agrees to waive his rights to sentence modification under I.C. 35-1a-18.

c. Defendant agrees to dismiss his appeal now pending in Howard Superior Court, Div. II, Cause #427.

d. The State of Indiana agrees to dismiss all other counts now pending in this Action, and all other causes of action now pending in Howard County. The State further agrees not to file any additional counts in the cases now pending in Howard County.

e. The State further recommends that Defendant's sentence be served concurrently with his sentence in Cause No. 427 and with the sentence he is presently serving in the State of Michigan.

4. That Defendant states to the Court that said recommendation is made of his own free and voluntary act and that no one has threatened or promised him anything other than that contained herein. Further that Defendant fully understands the consequences of this recommendation.

5. The Defendant has been advised and understands that this Court is not bound by this recommendation, however the Defendant also understands that if this recommendation is rejected by the Court, it must be so rejected before the case is tried.

STATE OF INDIANA BY:

/s/ Curtis C. Welke
Deputy Prosecuting Attorney
CURTIS C. WELKE

/s/ Patrick Ramirez
Defendant
PATRICK RAMIREZ

/s/ Jeffrey A. Lockwood
Attorney for Defendant
JEFFREY A. LOCKWOOD

Defendant appears with counsel, Jeff Lockwood.

State appears by Robert Bly.

Defendant withdraws request for jury trial and plea of not guilty.

Defendant advised of terms of plea bargain.

Referred to the probation department for presentence investigation report.

Ruling set 1:30 P.M. August 17, 1981.

Defendant requests appeal bond be released.

Defendant's motion granted.

Appeal bond released.

* * * *

[Filed Apr. 14, 1983]

CAUSE 424—MOTION DATED AUGUST 17, 1981, TO WITHDRAW PLEA BARGAIN. (192)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 17th day of August, 1981 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Defendant appears in person and by counsel and moves to withdraw plea bargain and be set for jury trial.

Granted.

Jury trial set for December 10, 1981 at 9:30 A.M.

Omnibus hearing set for 10-14-81 at 3:00 P.M.

* * * *

[Filed Apr. 14, 1983]

CAUSE 424—HEARING AUGUST 17, 1981. PETITIONER MOVES TO WITHDRAW PLEA BARGAIN. (526-531)

JUDGE: All right, Mr. Bly, are you ready?

MR. BLY: Yes, Your Honor.

JUDGE: All right, this is 424, State of Indiana versus Pat Ramirez. The record will show that Mr. Bly appears for the State. The defendant appears in person, by his counsel, Mr. Lockwood. Court has received a presentence investigation report and considers it. Mr. Smith of the probation office is present. Mr. Lockwood, it's my understanding that your client has something to say or you have something to say.

MR. LOCKWOOD: My understanding, Your Honor, is Mr. Ramirez does not wish to go forward with the plea agreement. He has expressed to me his desire to request of the court to withdraw his previous plea of guilty that was entered the last time we were in court and ask the court to reinstate his plea of not guilty and reset it for trial. That's the communication I've had from my client.

JUDGE: Mr. Lockwood, he didn't, he just requested to change his plea. I don't think that was done according to the record here.

JUDGE: And so we don't have that to undoe. Is that your position, Mr. Ramirez?

A. Yes, it is, Your Honor.

JUDGE: All right, do you want to withdraw your agreement on the request for plea bargain?

A. Yes.

JUDGE: The recommendation for plea bargain, you want to withdraw that and you wish to maintain your not guilty plea and have the matter set for jury trial again, is that right?

A. Yes.

JUDGE: All right. Mr. Bly, Anything?

MR. BLY: Your Honor, the State has nothing, except we would in view of this, the court accepts this, the State would move for an omnibus hearing and trial date.

JUDGE: Well, very well, we'll, I think Mr. Ramirez that you have a right to do this at this time. I haven't ruled on it. So, we'll show that that is withdrawn and your not guilty plea is still in effect. And your request for jury trial is still in effect, and we'll set it for trial here. It looks to me that Mr. Lockwood, that November 17th would be a good day, for jury trial.

MR. LOCKWOOD: I am presently scheduled to try a jury trial in Madison Circuit Court that date.

JUDGE: Ok.

MR. LOCKWOOD: I might say, Your Honor, that in view of the fact that my signature appears on the Recommendation, my client's and Mr. Welke, and I also might say that in light of the fact that I counseled with Pat concerning this plea agreement on numerous occasions, in Michigan, and it stipulates things that Mr. Ramirez is no longer able to go along with. Perhaps, it should be determined whether or not I am going to continue in my representation. I don't know how he feels about that at this time. And frankly, I'm not sure how I feel.

JUDGE: Well, you know, that's something that you have to determine.

MR. LOCKWOOD: And I also understand that this is certainly in the best interest of this proceeding to get this thing set for trial and I'd be more than happy to work together to get it set.

JUDGE: I understand. People get more attorneys and we just have to face that when it comes, if it does. All right, I'm suggesting December the 10th for jury trial in this case 424. Is that all right with you, Mr. Lockwood?

MR. LOCKWOOD: Yes sir.

JUDGE: Mr. Bly?

MR. BLY: Yes, Your Honor.

JUDGE: Ok, we'll set it for jury trial December the 10th at 9:30. Anything else Mr. Bly?

MR. BLY: Well, Your Honor, I would and I've talked with defense counsel about an omnibus hearing for the purpose of any motion which the defendant may want to file. In view of the fact that the trial is set somewhat in advance, possibly we could work in a date of an afternoon for this.

JUDGE: About when are you suggesting, October?

MR. BLY: October I think would give the defendant sufficient time to undertake whatever discovery they might have. Also it would permit Mr. Lockwood to make his determination.

JUDGE: What about October 14th?

MR. BLY: That's fine with me.

MR. LOCKWOOD: Well, I have a potential conflict on that date, but in view of the fact that the trial date is set up quite a way, I think if we can, go ahead and set it and as soon as I find out . . .

JUDGE: Like 3:00 in the afternoon.

MR. LOCKWOOD: 3:00, that'd be fine.

JUDGE: Ok, we'll set omnibus date for October 14 at 3:00.

MR. LOCKWOOD: My potential conflict is a jury trial in Grant Circuit Court. But it's set as a second choice.

JUDGE: Ok, that's all.

AND NO FURTHER PROCEEDINGS WERE HELD IN THIS CAUSE ON THIS DATE.

CAUSE 424—MOTION DATED JANUARY 18, 1982 TO DISMISS. (210-216)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 18th day of January, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Niles Stanton appears for Defendant and files Motion to Dismiss together with Memorandum in Support Thereof, which motion and memorandum are in words and figures as follows: (H.I.)

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

MOTION TO DISMISS

Defendant Patrick Ramirez, by counsel, respectfully moves the Court to dismiss the charges against the defendant contained in Cause No. 424. In support of his motion defendant states as follows:

1. On March 16, 1981, the Howard County Prosecutor's Office lodged a detainer against the defendant who was then incarcerated in the State Prison of Southern Michigan.

2. The State was given temporary custody of the defendant pursuant to the Interstate Agreement on Detainers, Ind. Code § 35-2.1-2-4 (1976)

3. The detainer was based *solely* on Cause No. 470, which consisted of two (2) counts of dealing in marijuana and a bench warrant issued on those charges.

4. The aforementioned detainer is the only detainer from Indiana which was lodged against the defendant. (*See* "Affidavit of Defendant" and defendant's exhibits attached hereto and incorporated herein.)

5. The State now seeks to prosecute the defendant on Cause No. 424, which consists of three (3) counts of dealing in a Schedule IV controlled substance.

6. The events charged in Cause No. 424 are not a part of the same transaction as those charged in Cause No. 470. (*See* "Memorandum of Law" attached hereto and incorporated herein.)

7. Indiana law prohibits the prosecution from trying the defendant on Cause No. 424 since no valid detainer was lodged on those charges and since the events which are alleged in Cause No. 424 do not arise out of the same transaction as those alleged in Cause No. 470. (*See* "Memorandum of Law" attached hereto and incorporated herein.)

WHEREFORE, defendant Patrick Ramirez, by counsel, respectfully moves the Court to dismiss the charges against him contained in Cause No. 424.

Respectfully submitted,

/s/ Nile Stanton
NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion to Dismiss" has been served upon Mr. Fred. G. Osborn, Howard County Prosecutor, Courthouse, Kokomo, Indiana 46901 by United States mail this 15th day of January, 1982.

/s/ Nile Stanton
NILE STANTON

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

VERIFICATION

I hereby affirm that the foregoing representations are true, under the penalties for perjury, to the best of my knowledge.

/s/ Patrick Ramirez
PATRICK RAMIREZ

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

SUBSCRIBED AND SWORN to before me a Notary Public for said State and County, this () day of January, 1982.

/s/ Signature illegible
Notary Public
Resident of Howard County

My Commission expires:

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

AFFIDAVIT OF DEFENDANT

I, Patrick Ramirez, being first duly sworn upon my oath, depose and say as follows:

1. During my incarceration at the state prison of Southern Michigan, I was informed of only one (1) detainer being lodged against me from the State of Indiana.
2. That detainer was based upon Cause No. 470 from Howard County; two counts of dealing in marijuana and a bench warrant issued on those charges.
3. No other detainer from Howard County, Indiana, was lodged against me.

/s/ Patrick Ramirez
PATRICK RAMIREZ

[Filed Apr. 14, 1983]

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

The State was given temporary custody of the defendant pursuant to the Interstate Agreement on Detainers, Ind. Code § 35-2.1-2-4 (1976). On March 16, 1981, the prosecutor's office lodged a detainer against the defendant who was then incarcerated at the State Prison of Southern Michigan. The detainer was based solely upon Cause No. 470, which consisted of two (2) counts of dealing in marijuana and a bench warrant issued on those charges.

The prosecution is not satisfied with using its temporary custody of the defendant for trying the defendant for Cause No. 470. The prosecution now seeks to try the defendant for three (3) counts of dealing in a Schedule IV controlled substance. The law in Indiana,

however, clearly prohibits the prosecution from carrying out its intended course of action. Subparagraph (d) of Article 5 of the Agreement on Detainers provides that the State's temporary custody of the defendant can be used "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, information of [or] complaints *which form the basis of the detainer* or detainers or for prosecution of any other charge or charges *arising out of the same transaction.*" (Emphasis added). *See*, Ind. Code § 35-2.1-2-4 (1976). The import of this language is clear and must be interpreted in accordance with its plain meaning. *Shewmaker v. State*, (1956) 236 Ind. 49, 138 N.E.2d 290.

Prosecution of Cause No. 424 clearly does not fall within the purview of the State's authority over the defendant. The State did not lodge a detainer based upon Cause No. 424 against the defendant. (*See*, Defendant's Exhibits 1, 2 and 3 attached hereto and incorporated herein. It is also apparent that the charges in Cause No. 424 did not arise "out of the same transaction" which led to Cause No. 470. Cause No. 470 contains two (2) counts alleging dealing in marijuana. The alleged deliveries took place on December 17, 1979, and on December 21, 1979. The alleged acts of Cause No. 424 are not connected with those of Cause No. 470. Cause No. 424 is comprised of three (3) counts of dealing in a Class IV Controlled Substance (diazepam). The alleged deliveries of diazepam are to have taken place some nine months before the alleged delivery of marijuana in Cause No. 470.

There is no detainer based upon Cause No. 424. Cause No. 424 and Cause No. 470 did not arise out of the same transaction. The Interstate Agreement on Detainers cannot be interpreted by an stretch of the imagination to give the state authority to prosecute the defendant for Cause No. 424. The defendant therefore moves this

Court to dismiss the charges contained in Cause No. 424.

Respectfully submitted,

/s/ Nile Stanton
NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Law has been served upon Mr. Fred G. Osborn, Howard County Prosecutor, Courthouse, Kokomo, Indiana 46901 by United States mail this 15th day of January, 1982.

/s/ Nile Stanton
NILE STANTON

CAUSE 424—HEARING JANUARY 25, 1982.
MOTION TO DISMISS. (552-600)

JUDGE: All right, we're on the record on 424, Criminal, State versus Patrick Ramirez. The record will show that Mr. Bly, Mr. Bob Bly appears for the State. Mr. David Arthur from the Attorney General's office appears, and Mr. Kevin McShane, Attorney at Law from Indianapolis and Mr. Stanton's office, appears for the Defendant. Mr. Ramirez also appears. Mr. Stanton filed several days ago a motion to dismiss in 424. And since this matter is set for trial on Thursday, I set it for argument this morning. I'd ask you to proceed, Mr. McShane, if you're ready.

MR. MCSHANE: Yes, thank you, Your Honor. Mr. Arthur just indicated to me that he had some documents that he wished to place into evidence. I had planned on doing the same myself.

JUDGE: That's fine. If you have something that you want to place into evidence. Normally, on a motion like this we only have argument on it, so I picked the word argument instead of hearing.

MR. McSHANE: Yes, Your Honor, I believe there are some documents that we would like to introduce, and also I want to put Mr. Ramirez under oath.

JUDGE: All right, sure, sure.

You might want to put your documents in by stipulation then.

MR. McSHANE: At this time, Your Honor, the defendant in support of his Motion to Dismiss would offer into evidence Defendant's Exhibits #1, #2 and #3 pursuant to stipulation with the State.

JUDGE: All right, be admitted. All right, and you want your client sworn to testify, is that right?

MR. McSHANE: Yes, Your Honor. There are two other documents which were made exhibits to our Motion, letters we received in our law office in Indianapolis.

JUDGE: From Michigan?

MR. McSHANE: That's correct, Your Honor. I would at least like to know that they be made a part of the record at this time and so move, since they were filed.

JUDGE: Fine.

MR. McSHANE: Along with an affidavit pertaining to them, I believe.

JUDGE: Any objection to that?

MR. BLY: The only objection the State would have, Your Honor, is in the event, and I've discussed this with Mr. McShane, along with that so that the court has total access to what occurred here, there is a letter from Mr. Stanton to the manager of the General Offices Services, Department of Corrections in Michigan under a date of December 11, 1981. I would like this also admitted into evidence so that the court can see what was requested by Mr. Stanton.

MR. McSHANE: No objection to that at all, Your Honor. We would make that a defendant's exhibit.

JUDGE: All right, we'll make that an exhibit and we'll also consider the two letters attached to the Motion to Dismiss.

MR. McSHANE: I believe we're ready to proceed, Your Honor. At this time we would call the defendant, Patrick Ramirez.

JUDGE: All right, Mr. Ramirez, would you stand and raise your right hand and be sworn? Do you swear that you'll tell the truth and nothing but the truth in this matter so help you God?

A I do.

JUDGE: Ok, just have a seat right over here please.

PATRICK RAMIREZ,

after being first duly sworn to tell the truth in this matter, deposes and says:

DIRECT EXAMINATION

QUESTIONS BY MR. KEVIN McSHANE:

Q Would you state your name for the record please, sir?

A Patrick Ramirez.

Q And are you the same Patrick Ramirez who is the defendant in Cause No. 424 and 470 presently pending before this court?

A I am.

Q Mr. Ramirez, do you know at this time approximately both of these cases have been pending?

A March 20, 1979 on 424, and February 28, 1980.

Q And directing your attention to earlier this year, approximately March of 1981, where did you reside?

A Southern Michigan Prison at Jackson.

JUDGE: I'm sorry. What date?

MR. McSHANE: Around March of 1981, Your Honor.

Q Was that correct, sir?

A Yes, Southern Michigan Prison at Jackson.

Q And did there come a time when you received notice through the prison administration up in Jackson about the pending charges against you here in Indiana?

A Yes, I received a detainer against me on March 16th or 19th. One of the two dates. At that time I appeared in front of the counsel and they told me they had affidavits and probable cause. And a bench warrant and two indictments of dealing in marijuana. One on the 17th and one was on the 21st of 1979.

Q Representation made to you sir, what did they charges pertain to?

A Yes, it was Cause No. 470, dealing in marijuana.

Q Ok, was there any, at that time, oral notice given to you about the desire of the State of Indiana as communicated through authorities in the State of Michigan to prosecute you on three counts of Dealing in a Schedule IV Controlled Substance?

A No, there wasn't.

Q Did any of the documents which were shown to you pertain to the charges in Cause No. 470, contain any information, quote, any criminal information against you pertaining to charges of Dealing in a Schedule IV Controlled Substances?

A No, there wasn't.

Q Did you ever sign any waiver of extradition?

A Yes, I did.

Q Pertaining to which charges?

A I believe Sandra Phelps was the person that come from the main officer, from the warden's office. And she stated what the charges were. They tell you what they are. First of all they ask you if you can talk English, you understand what's going on. And I said no, I really didn't at that time. And she said well, you have a hearing before the U.S. Supreme Court notice that if you feel like you don't want to be going back to Indiana, or you want to fight it, you'll have a hearing before that. So, she brought the indictments and she brought the Clerk's Certificate. And she said that you'll be going back to Indiana on Cause No. 470, Dealing in Marijuana, bond set at $50,000. At that time that's when she told me. So, she told me to think about it. Two or three days later I talked to an attorney and he told me he says you've got to go back to Indiana or you can fight extradition. You'll be charged with Dealing in Marijuana. And at that time I said well, no problem, I guess I'll sign it. So, I signed it.

Q Mr. Ramirez, at that time was there ever any mention of a detainer being lodged against you and the State of Michigan pertaining to three counts of Dealing in a Schedule IV Controlled Substance?

A No, the only detainer was 470, marijuana, that's the only detainer they had.

Q Mr. Ramirez, when you were asked to formally waive extradition by the authorities at the prison in

Jackson, Michigan, were you asked to sign any formal waiver forms?

A Yes, I had to sign the waiver form in front of Sandra Phelps, I believe her name was. She was from the warden's office.

Q I now hand you what's been marked for identification as Defendant's Exhibit #5, and I'm going to ask you if you recognize it?

A Yes, this is what I signed on the 19th. And Mr. Barry Nintz, that is the warden.

Q Would you look at the second page, please sir. Do you recognize the signature on that page?

A Yes, that's mine. That's the attachment form showing that.

Q Is that the original of the form, Mr. Ramirez, or is that a photocopy?

A That's a photocopy.

Q Do you know what class felonies, Mr. Ramirez, the Dealing in Marijuana charges are in Cause No. 470?

A Sure, the statute reads in Indiana, the class in marijuana is Class D, and the Schedule IV was Class C.

Q Now, with reference to the Schedule IV, do you know which class felony that is, you just answered my question?

A Class C.

Q Do you know what the sentences are?

A Under the statute, I believe it was four years.

Q Now, Mr. Ramirez, had you known that the State of Indiana was seeking to extradite you for prosecution under the Schedule IV counts in Cause No. 424, would you have voluntarily waived extradition from Michigan, or would you have sought legal counsel and perhaps a hearing on that?

A I definitely would have had a hearing.

Q In, was it your opinion at the time that it was in your best interests to return here to Indiana on the marijuana charges?

A At that time I thought to co-counsel in Michigan, that the best thing would come back on the charges of dealing in marijuana due to the fact that the State's witness was filed two charges in theft, and that would have made him an habitual criminal. And he said that they probably wouldn't file them charges.

Q Prior to executing on the waiver, that's reflected, strike that.

MR. BLY: Are you going to offer it?

MR. McSHANE: Yes.

MR. BLY: I'm going to object to it.

MR. McSHANE: Go ahead.

MR. BLY: Unless I can ask a few questions.

MR. McSHANE: Sure.

MR. BLY QUESTIONS MR. RAMIREZ ON PRELIMINARY QUESTIONS:

Q Mr. Ramirez, Defendant's Exhibit #5 that you're seeking to introduce.

A Yes.

Q Are you calling this a waiver?

A Waiver?

Q Yes.

A No. Which one you talking about?

Q I'm talking about the whole thing.

A I'm talking about this right here.

Q What it's attached to?

A No, it's the bottom page. It's the single, they're stapled. It's right here. The second page.

Q Well, then Exhibit #5 is only the front page?

A I don't know what exhibit it is, sir.

MR. McSHANE: Yes, I was going to offer it and several portions at the time you asked your preliminary questions. I'll go through that right now.

MR. BLY: And this would be 6 here?

MR. McSHANE: No, I've made this 5 in two pieces.

MR. BLY: 5A and 5B?
MR. McSHANE: Yes.
MR. BLY: Ok.

MR. BLY CONTINUES WITH PRELIMINARY QUESTIONS:

Q On 5B which would be the second page, your attorney has indicated will be 5B, are you saying that that is the waiver that you signed?

A Yes, it is.

MR. BLY: Your Honor, the State has no objection to the introduction of Defendant's Exhibits 5A and 5B. However, the State would at this time object to the reference to 5B by the defendant or to the court considering it as a waiver of anything since the clear reading of the document does not show that the defendant waived anything. It merely states what it says on its face.

JUDGE: All right.

MR. McSHANE: Well, Your Honor, I think that we can call it what we want, and the State can call it what they want, and the court can decide what it thinks.

JUDGE: I think you're right.

MR. McSHANE: We'd offer at this time Defendant's 5A.

JUDGE: It will be admitted.

Q Did you sign any other documents, Mr. Ramirez, besides Defendant's Exhibit 5B that I just showed you?

A No, that was the only one I had to file, signed, was B, and if I didn't, you know, if I wanted a hearing then I waived my rights.

Q You never did have a hearing did you?

A No, because I signed.

Q You just signed?

A I waived my rights, yeah.

Q Did you waive your rights with respect to the Schedule IV counts as charged in Cause No. 424?

A Well, at the time no one had no knowledge of it.

Q Had anybody informed you?

A There was no knowledge in Michigan whatsoever.

Q Had anybody asked you if you wished to waive the extradition or whether you wished an extradition hearing in the State of Michigan on those counts?

A No, because the only reason why they brought me, due to the fact that the Clerk's certificate was just stated, 470, and at that time when I talked to an attorney, he told me that's the only charges I would be charged with. If that wasn't the case they could add on murder, kidnapping on the way down. He set you'll just be going to court on 470. Because . . .

Q Sir, you did consult counsel prior to waiving extradition?

A Yes, I did.

Q And at that time, between you and your counsel, was any mention made of any of the counts at all that are contained in Cause No. 424 presently before this court?

A No, because they never sent no record of it to Jackson.

Q And once more, sir, if those counts had been part and parcel to the detainer documents filed by the State of Indiana with the officials in the State of Michigan, would you have, in fact, waived extradition pertaining . . .

MR. BLY: I'm going to object to the form of the question as to what the defendant would or would not have done.

A I stated what I would do.

MR. McSHANE: Your Honor, it's apparent, I believe, from the documents that are already into evidence, and from Mr. Ramirez's testimony up to this point that he waived some constitutional rights in reliance on certain documents filed by the State of Indiana with officials in the State Prison in Jackson, Michigan. And it was based on this reliance on what rights he was giving up at the time that I'm asking the question. The court can't know what his state of mind was at the time un-

less we ask him. He's competent to testify as to his own state of mind.

MR. BLY: Your Honor, I still maintain my objection for the same reasons I set forth. Asking Mr. Ramirez what he would have done or wouldn't have done belies what he, in fact, did do. I think the documents speak for themselves. It can only be a self-serving statement.

JUDGE: Well, are you saying the document are cover anything more than Mr. McShane is saying they cover?

MR. BLY: The question is, Your Honor, what would you have done. That's the objection. What would you have done.

JUDGE: I understand.

MR. BLY: What would you have done five months ago. The answer to that question, forecasts a self-serving answer. We would object to the question.

MR. McSHANE: Your Honor, we would admit.

JUDGE: Just a minute, Mr. Bly, are you saying that these documents that Mr. McShane has put into evidence, particularly 5 pertains to anything more than what he says they pertain to?

MR. BLY: Not necessarily, Judge.

JUDGE: Yes, ok, well, I saw Mr. Arthur shake his head back there at one point that made me think maybe he did. What about it, Mr. Arthur, do you think they mean anything more than Mr. McShane?

MR. ARTHUR: What I was shaking my head about, Your Honor, is that there are no constitutional rights under the interstate agreement on detainers as is made clear in Adams vs. Kyler set by the Supreme Court last year. It's an entirely a question of statutory law. Therefore, the question of waiver and the standard to be applied is considerably less than if there were any constitutional rights. And at that point the question of what he would have done becomes irrelevant. The only questions are what he did, since there does not have to be a knowing, voluntary intelligent waiver as there would be if there were constitutional rights involved.

JUDGE: So, you're wanting the court to take the position that it doesn't make any difference what the next answer is if there is a next answer, is that right?

MR. ARTHUR: That's correct.

MR. McSHANE: He's answered it once before anyway, Judge.

JUDGE: I thought he did too. We'll let him answer it. You may answer it.

A In all the confusion, I forgot the question.

JUDGE: I don't blame you.

Q Mr. Ramirez, would you have, in fact, formally waived extradition from the State of Michigan to the State of Indiana last March had you known that the state was seeking, the State of Indiana, was seeking to bring you down here to prosecute you for three C felonies being the counts in Cause No. 424 Dealing in a Schedule IV Controlled Substance?

A Yes, I would have fought it. I would never have returned to Indiana.

Q You would have at least fought it?

A I would have.

Q And invoked the statutory rights, not the constitutional ones that were attended on you in those circumstances?

A Right.

MR. McSHANE: That's all I have.

CROSS EXAMINATION

QUESTIONS BY MR. ROBERT BLY:

Q Mr. Ramirez, on the date that you received these documents in March, were you represented by an attorney here in Indiana?

A Yes, I was.

Q What was that attorney's name?

A Jeffrey Lockwood.

Q And Mr. Lockwood had authority to speak for you at that time? As your attorney?

A At that time?

Q Yes.

A I paid him. He was handling cases 427.

Q Was he handling any other cases?

A I paid him all the attorney fees and he was handling my appeal.

Q Was he handling 470 for you at the time?

A I reckon he was.

A Was he handling 424 for you at the time?

A I'm not sure on that one. I'm not sure.

Q Do you recall on July 23rd, I believe, submitting a plea bargain in this court?

A Yes, yes I have.

Q And does your signature appear on that plea bargain?

MR. McSHANE: Excuse me, counsel, I would ask leave to ask a preliminary question.

MR. BLY: Sure.

JUDGE: Go ahead.

MR. McSHANE QUESTIONS DEFENDANT ON PRELIMINARY QUESTION:

Q The plea bargain referred to by the prosecutor, Mr. Ramirez, ever executed? Did it ever take full force and effect?

A No, it didn't.

MR. McSHANE: Your Honor, at this time we would object to any reference to any plea negotiations which were never formally executed.

MR. BLY: Your Honor.

MR. McSHANE: Excuse me, counsel, Indiana statute provides that those are not to be admissible in court for any purpose whatsoever except when a court takes a guilty plea and imposes a sentence.

MR. BLY: Your Honor, I'm referring to the record only. I think the record speaks for itself. The court can check the record with respect to the executed plea bargain

as well as the docket sheet. I'm merely asked Mr. Ramirez if he signed that plea bargain. If that is his signature which appears on it in 424.

JUDGE: I'll let him answer if he signed one.

A Yes, I signed that on the 23rd of July.

Q And you appeared here in court, did you not?

A Yes, I did.

Q And if the court minutes would show that that was submitted, would you disagree with that?

A No, it's on record. It's on the docket sheet.

Q And you reappeared here on August the 17th, did you not?

A Yes sir.

Q And at that time you withdrew from the plea bargain, did you not?

A Yes, I did.

Q And that motion was granted, was it not?

A Yes, it was.

Q Ok, now, you make reference in your testimony that you received a detainer on March 16th, what did you really receive on March 16th, Mr. Ramirez?

A I received all the copies that you sent, that Fred Osborn signed and the detainer agreement between Indiana and Michigan with Mr. Nile from Michigan and Indiana, I don't believe I know, Marge Barker, that's her name, from the detainer from the Department of Corrections. They agreed to it, that I would come back to the State of Indiana on charges of dealing in marijuana, 470.

JUDGE: They meaning somebody in Michigan.

A No, the two parties from the Department of Corrections.

JUDGE: What departments?

A Two departments, the State of Michigan and the State of Indiana.

Q Mr. Ramirez, what did you receive on March 16th or thereabouts? Tell the court what you received?

A What did I receive?

Q Un huh.

A I received everything that they sent which had been Clerk's Certificate. It was the 19th or the 16th. Sometime in March. Ok. I don't know the date. I received the Clerk's certificate, the bench warrant, the two affidavits, probable cause.

Q What you received was a bench warrant, wasn't it?

A Yes.

Q And you received the Clerk's Certificate?

A Right.

Q You call that a detainer?

A No, I didn't call that a detainer.

Q You testified that it was a detainer, did you or did you not?

A No.

Q You did not receive a detainer then, you received a bench warrant and the Clerk's Certificate?

A Right.

Q Mr. Ramirez, I'm going to show you, I'm not going to show it as in evidence because it's in the file, a copy of something that's in the file in 470. Would you care to identify that?

A Yes, this is under Superior Court 2, Cause No. 470, it was filed on March 11, 1981.

Q What does it say?

A This motion set for trial by jury to come on March 12, 1981.

Q What's it titled?

A Stipulation of Continuance.

Q Is that signed by anyone?

A Signed by Jeffrey Lockwood and Curtis Welke.

Q Does anything else appear on there? Does it show when it was submitted to the court?

A Yes, it was filed on March 11th.

Q What year?

A 1981.

MR. BLY: I would call the court's attention to a Stipulation for Continuance which Mr. Ramirez has just identified in the file on 470.

MR. McSHANE: No objection to that, Your Honor. I would further call the court's attention to the fact that it's not signed by the defendant. For the record.

JUDGE: Fine.

Q Now, Mr. Ramirez, if you look at the docket sheet on 470 it would seem to show that your trial was set for April 15, 1980, would it not, I'm sorry, 1981, correction, March 26, 1981 at 1:30 on 470?

A Yes.

Q Did that trial go?

A No, it didn't.

Q Where were you on March 26, 1981?

A Department of Corrections, Jackson, Michigan.

Q Do you know why you weren't tried on 470 on March 26, 1981?

A No, I didn't.

Q Did you ask your attorney at that time?

A Well, I didn't see my attorney. The first time I seen him, I went in incarceration on November 19, 1980. I seen him January 23rd, to be exact, 1981. At that time he come to the Southern Michigan Prison.

Q That's Mr. Lockwood?

A That's correct, Mr. Lockwood, and told me at that time, Curtis Welke was the prosecuting attorney in the case and told me if I would plead guilty to all these charges, that I would do two years run concurrently, which would be one year, and that would be the whole situation on matters 470, 428, 424 and I would have to abandon the appeal which was in appeal court on 427.

Q But you signed the plea bargain, didn't you?

A No, I didn't. Because. . .

Q You didn't?

A Wait a minute, I'm talking, I said January of 1981. And that's when Curt Welke was the prosecutor. Well, then in April he come to see me. Mr. Lockwood

came to see me in April of 1981. At that time he informed me that Mr. Bly who took the prosecutor attorney's job, I mean, he was going to appear for the State and he come and told me, and I said well, what's the deal on the two years. And at that time he says that the two years was the deal between him and Mr. Welke. So, he said, well, they lodged a detainer. I guess you already know that so you'll be coming back to Kokomo, Indiana, Howard County. And I said well, whatever, you know, so I came back on July 21 of '81.

Q Now, you're telling the court that Mr. Lockwood and I had a conversation saying that the plea bargain that you and he had heretofor agreed to or what you and the State had agreed to was not applicable?

A Which one are you talking about, yours?

Q I'm talking about the one that was filed and signed by you?

A That was filed on the 17th. I mean, yeah, no it was the 23rd of July that it was filed. And I can state the reason why I didn't take, accepted the plea bargain.

JUDGE: I think you're talking about two different plea bargains.

A No, I'm just talking about one, sir, because the first one I never accepted because I never signed nothing, that was with Mr. Welke in January of '81.

JUDGE: How could that be the first one? You just said the other one was in '80.

A No, no, sir. The first plea bargain pertaining to these cases was in January, 1981, when Mr. Lockwood come to Southern Michigan Prison.

JUDGE: That was the two-year deal?

A That was the two-year deal and I'd do one year.

JUDGE: All right.

A Ok, and then the second one was July 23rd, 1981.

JUDGE: July what?

A 23rd, 1981. At that time I signed the plea bargain, but the reason I didn't accept the plea bargain cause I was supposed to appear in Court August 17, 1981. . .

JUDGE: Ok.

A Ok, that's when I appeared back in court. Well, on July 27, 1981, I had all my court papers from Michigan, well, according to the, when I went back to the jail my papers wasn't there, and there was a reason why they wasn't there. Well, I didn't know at the time so I filed and I have copy records that I filed that with records, and they sent all my records again. So, I contacted an attorney up there and he says all your papers are gone, and I said yes, they're gone. He said you know why and I said no I didn't know why. He said well, due to the fact the Clerk's Certificate is the whole key to that. When Mr. Howard signed that, he represents the courts. And it's also a document when Mr. Van Dorn signed it. And it states that you was coming back for case number 470, so someone didn't want you to have them so, I figured I was fighting for time, so I filed it and they sent it all back to me. Which I have at this time which I. . . .

JUDGE: Who sent it back to you?

A Department of corrections. I have photostatic copies.

JUDGE: Both of them?

A Both of them. They sent both of my records to me and I had to call them.

JUDGE: Ok, but then in August, it was August of '81, you said that you withdrew the plea bargain?

A August 17th to be exact.

Q Now, Mr. Ramirez, you've talked about two plea bargains, you've talked about oral agreements, what have you, maybe I ought to be a little more specific so that we understand that we're talking about the same thing, there have been two plea bargains filed in 424, have there not?

A Yes, I believe there was.

Q Ok, now there was one filed November 16, 1979, was there not?

A Correct.

Q Then there was the one that was filed last summer?

A Correct.

Q The discussion that you and your attorney thought that you had with Mr. Welke was not ever reduced to writing or was it?

A No, I was incarcerated. I don't know what Mr. Lockwood, spoke to Mr. Welke or whether he talked to the Joe Blow down the street. I don't know. This is what he's telling me. But I had nothing come down on paper is what I'm saying.

Q Your attorney didn't write to you and explain this to you?

A I said he come to visit me. This was oral face between me and him in consultation room and this is what he told me. Two years I'd do if I abandon the appeal and plead guilty to 4-something, 470.

Q Ok, Mr. Ramirez, when did you then appear in Indiana?

A What date that I arrived here?

Q Yes.

A I arrived here 4-21-81, I mean 7-21-81.

Q July the 21st, 1981?

A. Yes sir.

Q And you were brought here for what reason?

A Detainer.

Q Well, why was the detainer lodged, are you aware of that?

A Sure enough. It was lodged detainer against me in Howard County, Indiana, on the charges of Cause No. 470, Dealing in Marijuana, one and two.

Q Did you receive any other documents in Michigan?

A No sir, there was never no documents sent other than the ones, the Clerk's certificates, and the warrants, the bench warrant from this court, Superior Court 2 acting in 470.

Q But you did sign a plea bargain, and you did file it on July 23rd, did you not?

A I did.

Q And your attorney at that time, Mr. Lockwood, signed it, did he not?

A He did.

Q And you do recall sitting right here in court and asking the court to accept it, do you not?

A Pardon.

Q Well, strike that. You do recall filing it, don't you?

A Filing it, yes.

Q Do you recall what the cause number was on that?

A I can't hardly remember what the plea bargain was.

Q Would you like to see a copy of it from the court files or what have you?

A Yes, I'll see it.

Q Is that the document that I just made reference to?

A Un huh. I know what it is, to run concurrent with the State of Michigan.

Q Is that your signature?

A Yes, it is.

Q That is the document you filed here two days after you were brought here?

A Right.

Q And what is the cause number that appears on that?

A 424.

MR. BLY: State has no further questions of this witness.

MR. McSHANE: Couple more.

JUDGE: Sure.

RE-DIRECT EXAMINATION

QUESTIONS BY MR. MC SHANE:

Q Mr. Ramirez, the plea bargain, plea agreement that was just shown to you by the prosecutor in Cause No. 424, that plea was never effectuated or accepted by the court?

A No.

Q Wasn't it, in fact, rejected by the court?

A No, I had on the 17th, I withdrew my withdrawal. I didn't want to accept it.

Q And what was granted?

A Yes, it was.

Q Whatever the State wants to call the documents that you saw in Michigan pertaining to the marijuana case, you in fact, signed the Defendant's 5B that I showed you?

A Yes, I did.

Q You, in fact, were brought from Michigan down to here, weren't you?

A Yes.

Q The prosecutor mentioned this March 26th trial date that was set at one time on Cause No. 424, is that your recollection of the date?

A Well, see, I had, I was incarcerated and I had no communication with lawyer that I had here. All I know that I paid him the money.

Q You had no reason to disagree with the prosecutor when he asked you whether that case was actually set for that day, did you? Did they bring you down for that day?

A No, they didn't, sir.

Q You didn't get any papers like you see before you today for that trial date, did you?

A No.

Q Were you free to leave the State of Michigan and travel down here on your own accord to come to court?

A No. No, I never received nothing.

Q Is it your testimony that you weren't aware of the trial date?

A No, I wasn't aware of it.

Q OK.

MR. McSHANE: That's all I have.

JUDGE: Ok, you may step down.

MR. McSHANE: The defendant rests on this motion, Your Honor.

JUDGE: Does the State have any evidence that you want to present, Mr. Bly?

MR. BLY: State has no evidence to offer other than the record.

JUDGE: All right.

MR. McSHANE: Brief argument, Your Honor.

JUDGE: Sure.

MR. McSHANE: I believe that our position is fairly well covered in the Motion and Memorandum. In particular, Your Honor, with respect to Article 5 of the interstate detainer act which goes to the State of Michigan I recognize about a process of transferral of a prisoner between jurisdictions for the purpose of bringing somebody who is incarcerated is one of those restrictions to trial.

JUDGE: Now, this is the 35-2.1-2-4 is that what you're talking about?

MR. McSHANE: That's correct.

JUDGE: Ok.

MR. McSHANE: Article 5 is the article in that interstate agreement which we quote in our memorandum in support of the motion. And also, we hooked in Miranda. And it states that, and Mr. Arthur may or may not be right of no constitutional rights attach to extradition proceedings, there's certainly an equal protection right that must attach if the states are going to seek to use these interstate agreements against people, they must be equal. Other than that there are certain statutory rights which the agreement sets forth. One of them being Article 5 which states in part that the, subparagraph D of Article 5 of the Agreement on Detainer provides that the State's temporary custody of the defendant can be used "only for the purpose of permitting prosecution on charge or charges contained of one or more untried indictments, information or complaints which form the basis of the detainers, or detainers or for prosecution on any other charge or charges arising out of the same transaction." These transactions and times

which are alleged, Your Honor, in the two cause numbers are, I think, some five or six months apart in time, and in no way are construed to be a part of the same transaction. Different substances, the state will attempt to prove at trial there were different people involved in this, they are not part of the same transaction. And as we've shown, the only documents that Mr. Ramirez received and eventually formally signed pertain only to the marijuana counts. The State produced no evidence that he was ever in any way notified that he must give up his extradition rights in Michigan to come back here and face the charges of Dealing in a Schedule IV Controlled Substances. That is clearly not in compliance with Article 5 of the agreement. For that reason, it's our position that the court has limited jurisdiction at this time to preside over a trial or force Mr. Ramirez to answer charges contained in the Schedule IV Dealing charges. And for that reason we would ask that the court order at this time that the Cause No. 424 and all counts therein be dismissed.

JUDGE: How does this, why do you cite Schumaker here at the bottom?

MR. McSHANE: Your Honor, I believe that case is cited for the proposition that it's statutory language, when it's clear must be interpreted, I do not believe that is an extradition case.

JUDGE: Ok, no, it doesn't appear to be and I just wondered, ok.

MR. McSHANE: Ok, it's our position that the meaning is absolutely plain and it's not been complied with and the State has offered no evidence whatsoever to show that it has been. Thank you, Your Honor.

MR. ARTHUR: I read through the memo a couple different times and I read through the statute several times over the last five and a half years. I have yet to hear or to read anything to show that dismissal is appropriate in this case. There are only two circumstances under the interstate agreement on detainers when dis-

missal of charges and that is what is being asked for here, when dismissal is appropriate. Neither of those is brought up in the Motion to Dismiss. The first of those is if the person is not tried within a proper time, either 180 days or 120 days whichever applies. The second is if the person is returned to the original state of incarceration, the sending state in terms of the interstate agreement on detainer without a trial on the charge. Assuming for just a minute, that Mr. Ramirez is not properly here in Cause No. 424, even that would not be a ground for dismissal. The most that the court could do would be to say okay, trial will go forward on 470, the one that you said he's here on and we can't have the trial on the other one because the temporary custody is not for that. That would in no way be a cause for dismissal. It would only be for a delay. The scenerio at that point would be he's returned to Michigan. We'd file a retainer and he is brought back again. However, we were assuming there that he was not properly here in 424 under the interstate agreement on detainers. That assumption is not correct. I'm not sure which of the exhibit numbers it is. There is a letter from the prosecuting attorney's office attached to that is a copy of a Form 5 as it is known under the interstate agreement on detainers, and a copy of Form 6. The Form 5 is a request by the prosecuting attorney to have a person returned to the prosecuting jurisdiction for trial. The only cause number referred to on that piece of paper is Cause No. 424, the one where dismissal is sought in this case.

JUDGE: Let's find that document.

MR. ARTHUR: Your Honor, that's correct except it also refers to those charges as being marijuana charges. They got the case number wrong. That would be a fair inference.

JUDGE: Who has those?

MR. ARTHUR: Those are the first three documents that were submitted for stipulation.

JUDGE: You're talking about this?

MR. ARTHUR: Yes.

JUDGE: Ok, I got you. This was from the prosecutor's office here to Michigan Department of Corrections evidentally. Ok, proceed. Thank you.

MR. ARTHUR: The only cause number that is referred to there is Cause No. 424. Whatever they may say about the crime in this, it's obvious that they are talking about Cause No. 424, because there are not three counts in Cause No. 470, there are only two counts. Typographical error. No harm to anybody. It is clear from this document that cause number and the number of counts that form the basis for this request for temporary custody.

JUDGE: In 424 there are three counts, but it's dealing in something other than marijuana, right, factually?

MR. ARTHUR: Correct. That's insubstantial error, typographical error in terms of the fact that it clearly specifies that this request is under Cause No. 424. There's a further fact as shown by the next document which is a copy of a Form 6 under the Interstate Agreement on Detainers. He would be brought back on July 21 for trial on or about July 23. Defendant testified that he wasn't brought back on July 21. He testified that he was, in fact, in court on July 23 as the court's records will confirm, and that was under Cause No. 424 for the purpose of submitting a plea agreement. There's no doubt that he was brought back on those forms on Cause No. 424. The question then that arises is whether or not Form 5 is a detainer. It's clear that those documents filed back in March constitute a sufficient detainer to have him here under Cause No. 470. That's not even challenged in the Motion to Dismiss. In Keller vs. Adams, reported at 101 Supreme Court 703, 1981, cited by the Supreme Court of the United States, they said that all law under the Interstate Agreement on Detainers is federal law to be controlled by federal decisions. In it they specifically reject a Pennsylvania decision that had occurred shortly their decision. The

question is what the Supreme Court has defined a detainer to be. In United States versus Mauro, and United States versus Ford cited in 1978 and reported at 98 Supreme Court 1834 on page 1846 the Supreme Court said, "the agreement itself contains no definition of the word detainer". The House and Senate reports, and neither reports on the time when the Congress of the United States passed the interstate agreement on detainers. The House and Senate reports however, explain that "a detainer is a notification filed with the institution in which a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in another jurisdiction". That definition and four and five thoroughly fit each other completely. It's not only a notice that he is wanted, it's a notice that they want him back. There is nothing in either case law or statute that prohibits that document, five, from being both a detainer and a request to have the person returned. It's endorsed by the court. It lists the cause number and it's a request by the prosecuting attorney. Therefore, another fact to be taken into consideration is that. . .

JUDGE: Before we go on, Mr. Arthur, on these documents here that have been placed in evidence, do you believe that Mr. Ramirez's argument is based on Defendant's Exhibit #5 which includes his signature on the back.

MR. ARTHUR: Those two documents, all that they constitute, if you read through them, if you read the titles of them even, it says here's a notice about something. The first page says a detainer's been filed against you. It sets out what the detainer is. It sets out his right to request final disposition under Article III of the Interstate Agreement on Detainers. The second page, exhibit 5B, all that says is there was a case decided by the United States Supreme Court. Here are your rights under that case. Nothing, the word waiver is not in there on anything that was signed by the defendant

where he said I am waiving extradition, under the interstate detainer, agreement on detainers, provision for that, article three. He never did. There is no document on file in this court showing that he waived extradition. Those two documents or one document in two parts are really notices to him.

JUDGE: Ok, go ahead, I'm sorry. I may have untracked you.

MR. ARTHUR: No problem. To return then to part D of Article 5, it says the, I did have one other thing before I get to that. There was a waiver of a time period filed by Defendant's current counsel. That waiver refers to 120-day period provided by the Interstate Agreement on Detainers. The Interstate Agreement on Detainers provides a 120-day time period in which a person must be tried only in the case where the prosecutor has requested the return of an individual. In a case where a person has waived extradition and come back voluntarily, the time specified is 180 days. Clearly then the defendant through his counsel, by filing this waiver, is acknowledging Form 5, the Request for Temporary Custody, that this is a proceeding under the Article IV, where the prosecutor initiates the return of the individual. Returning to Article 5, Section D of the Interstate Agreement on Detainers, it says the "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on a charge or charges containing one or more untried indictments, informations or complaints which form the basis of the detainer or detainers. What we have in this case are two detainers, one filed in March under Cause No. 470, one represented by the Form 5 filed in July on which the defendant was brought back to this state on which he appeared in court specifically on that cause number two days after his return, cause number 424. The Interstate Agreement on Detainers, therefore, clearly allows these two prosecutions to proceed on schedule because each is based upon the detainer lodged against him in

the State of Michigan. Whatever his understanding or misunderstanding may have been, and whatever the understanding or misunderstanding of some administrators. They are not judges in the State of Michigan saying what is and is not a detainer. The letters filed from the administrators, the Michigan Department of Corrections are opinions of administrators and nothing more. So, whatever their opinions may be, whatever the understanding or misunderstanding of the defendant may be, he is properly before the court and is properly subject to prosecution on each of the two counts. That's all I have unless there are any questions from the court.

JUDGE: No, I don't think so. I do need to ask a couple of questions of Mr. McShane. Which of these documents that you've presented or that perhaps the state has, that you want me to use to say that it's only 470? Obviously, three talks about only 470, right? You're relying on that, and you're also relying on five I guess.

MR. McSHANE: Your Honor, as a matter of fact, we would rely on all the documents that have been submitted.

JUDGE: Well, yes, ok, I understand that, but to limit the State to 470.

MR. McSHANE: That's correct.

JUDGE: You think that all of them together have to be considered.

MR. McSHANE: I believe so, Your Honor. I think all the exhibits that you have before you, including the letters that were the exhibits, part of our motion, because in response to our question was 470 the only one, we get a written response back from the Department of Corrections, Michigan, yes, it was.

JUDGE: Ok.

MR. McSHANE: And I think that's critical in the case. I agree with Mr. Arthur. I think there was a typographical error on the one form where the charges are

designated under Cause No. 424, but they in fact, pertain to dealing in marijuana.

JUDGE: But he thinks the error is at one part on the line and you think it was another, is that right?

MR. McSHANE: That's correct, Your Honor. I mean if there's any doubt. I don't know, we don't have the person here who did that, so we don't know. I think any doubt should be resolved in favor of Mr. Ramirez who is not a lawyer and who would, it would be a fair inference for the court to make that the language dealing in marijuana would ring a bell with him, at that time, whereas not necessarily the cause number. And if there's a doubt in that area, I think that should definitely be resolved in favor of the defendant. Once again, Article 5 does not comply. There is no document before the court at this time to show that Mr. Ramirez was ever given any fair notice by anybody. And I agree that the attorneys here and the court shouldn't hold the administrators of the Department of Corrections in Jackson, Michigan or in the State of Michigan to the same sort of legal requirements that you might expect of an attorney or another court. But at the same time he says he's never even been told that by anybody up there. If the court finds that Defendant's 5A and 5B don't constitute a formal waiver, Mr. Ramirez did testify that he waived. He did understand that he waived, and the facts bear it out. The facts certainly bear out that somebody thought he waived besides him or else he'd still be up there. He's down here. A waiver was at least in a de facto manner which I think is possibly the same manner that the detainer was accomplished, a de facto manner. The document could have been more specific. With respect to the charges, I'd also point out that they contain these copies, Your Honor, of the information in Cause No. 470 which would indicate that that's what that detainer was for. There were no copies of the informations in Cause No. 424 provided to our knowledge to the Michigan Department of Corrections. That's borne out by the correspondence to our of-

fice, or Mr. Ramirez, it was borne out by his testimony. And there's no testimony to the contrary. And for those reasons we still believe that dismissal, the court must dismiss because the court does not have jurisdiction.

JUDGE: All right, then on that point, why, if you're right on those facts that you've just been talking about, it means that you know, everybody was talking about 470 from the start to the finish. Why then is dismissal the property remedy rather than something else?

MR. McSHANE: Because, Your Honor, the court can not try this man because of the method which he was brought down here. If the state wishes to take steps at a later time after this dismissal, I'm not sure. . . .

JUDGE: Well, but my point is, we don't, there are some cases that we don't try and we don't dismiss.

MR. McSHANE: I understand that. But, Your Honor, I would submit that those are cases where the court has both subject matter and personal jurisdiction over the defendant in a criminal case and we don't have that here. You, we would submit that the only remedy for the court is dismissal. If the court finds that that's too strict a remedy to impose against the state, I concur, as an alternative, I would concur with Mr. Arthur and say that they have at least got to send him back up there. And we can proceed on Friday, and well, the charges as charges in Cause No. 470 are certainly valid charges to be brought before the court. And Mr. Ramirez has been brought before the court in a legitimate fashion as pertaining to those two charges. The state is correct. We have no argument on 470 at all and we do understand that at this time that is set for trial coming this Thursday. As of right now we have no quarrel with that. It's the other ones that we're worried about. And there's just, all the documentation supports our position.

JUDGE: Ok. I'll take this under advisement and read through these documents because I haven't seen these, at least I haven't read them in the context of your argu-

ments. So, I will go over your motion and those two letters and. . .

MR. McSHANE: Would you care for counsel to stand by in that respect, Your Honor?

JUDGE: I think not, I'll just give you both a call, and Mr. Bly can call Mr. Arthur if he needs to. Give me your phone number?

MR. McSHANE: Area code 317-636-3300.

JUDGE: Ok.

MR. McSHANE: Certainly not in the way of any threat, Your Honor, but depending on what the ruling is, we may be making a motion for continuance and I think it would be fair to tell the court.

JUDGE: I understand I'll have to rule on it in a hurry for it to be effective for anybody. But we need to look it over anyway since you've presented it.

AND NO FURTHER PROCEEDINGS WERE HELD IN THIS CAUSE ON THIS DATE.

DEFENDANT'S EXHIBIT #1

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

June 23, 1981

Mrs. Marge Barker
Agreement Administrator
Indiana Department of Corrections
State Office Building
Indianapolis, IN 46204

Re: State of Indiana

Vs: Patrick Ramirez
Howard Superior Court II, Cause #424

Dear Marge:

Enclosed please find copies of Form V and Form VI on the above named indivudial. If you should have any questions, please contact me.

Yours truly,

/s/ Marty Menges
MARTHA P. MENGES
Administrative Assistant

Enc.

DEFENDANT'S EXHIBIT #2

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

June 23, 1981

Mr. Earl H. Nill
Agreement Administrator
Michigan Department of Corrections
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana
Vs: Patrick Ramirez
Howard Superior Court II, Cause #424

Re: State of Indiana
Vs: Bertram B. Eubank, Jr.
Howard Superior Court I, Cause #2265

Dear Mr. Nill:

Enclosed please find copies of Agreement on Detainers, Form V, on the above named individuals.

If you have any questions, please feel free to contact me.

Yours truly,

/s/ Marty Menges
MARTHA P. MENGES
Administrative Assistant

Enc.

AGREEMENT ON DETAINERS

REQUEST FOR TEMPORARY CUSTODY

To: Gary Mintzes
(Warden-Superintendent-Director)

State Prison of Southern Michigan
(Institution)

4000 Cooper Street, Jackson, Michigan 49201
(address)

Please be advised that Patrick Ramirez #A16D3193 who is presently an inmate at your institution is under [information] in the 62nd Judicial Circuit of which I am the Prosecuting Attorney.

Said inmate is therein charged with [offenses] enumerated below.

Offense

Counts I, II and III Dealing in Marijuana, under Cause #424, Howard Superior Court II.

I propose to bring this person to trial on this information within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody.

Signed /s/ Signature Illegible

Title Fred G. Osborn, Prosecuting Attorney
62nd Judicial Circuit, State of Indiana

DATED: June 16, 1981

Signed _____

(Judge)
Carl E. Van Dorn
Howard Superior Court II

cc: Patrick Ramirez
Marge Barker, Agreement Admin. (IN)
Earl H. Nill, Agreement Admin. (MI)
Honorable Carl E. Van Dorn

DEFENDANT'S EXHIBIT #3

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

March 16, 1981

Gary Mintzes, Warden
State Prison of Southern Michigan
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana

Vs: Patrick Ramirez (Jackson DOC#A16D3193)
Howard Superior Court II, Cause #470

Dear Warden Mintzes:

Enclosed please find certified copies of our Information Affidavits and Arrest Warrant on the above named individual. Please file these documents as a detainer on our behalf against Mr. Ramirez.

It is our understanding, through defendant's attorney, that Mr. Ramirez will be willing to sign a waiver (Form II) in this matter.

Please note the Court's address as follows: Howard Superior Court, Division II, Third Floor, Courthouse, Kokomo, Indiana 46901.

If you require further information, please feel free to contact my office.

Yours truly,

Fred G. Osborn
Prosecuting Attorney

Enc.

cc: Mr. Jeffrey A. Lockwood,
Defendant's Attorney

FGO/min

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

I, Donald C. Howard, Sr., Clerk of Superior Court, Division Two, of said County of Howard in the State Indiana, do hereby certify that the within and preceding pages contain a full, complete, true and exact copy of an Information Affidavit and Arrest Warrant, on file in a cause record in Cause No. 470, State of Indiana, Plaintiff, vs. Patrick Ramirez, Defendant.

Given under my hand and seal of office, at Kokomo, in said County of Howard, in the State of Indiana, this 16 day of March, 1981.

DONALD C. HOWARD, Sr., Clerk of
Howard Superior Court, Division II

/s/ Donald C. Howard, Sr.

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

I, Carl E. Van Dorn, Judge of the Superior Court, Division Two, of Howard County, State of Indiana, presiding in said County of Howard, do hereby certify that Donald C. Howard, Sr., whose name appears to be signed to the above certificate, is and was, at the time of signing the same, the Clerk of the Howard Superior Court, Division II therein mentioned, and as such was the proper person to make said certificate and that the same is in due form.

Given under my hand officially this 16 day of March, 1981.

/s/ Carl E. Van Dorn, Judge,
Howard Superior Court, Division II

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

I, Donald C. Howard, Sr., Clerk of the Superior Court, Division Two, Howard County, Indiana, do hereby certify that Carl E. Van Dorn, Judge, Superior Court, Division II for Howard County, Indiana, is an was, at the time of signing the same, the duly elected, qualified and acting Judge of said Court herein mentioned and as such was the proper person to make said certificate, and that the same is in due form.

Given under my hand and seal of office, at Kokomo, in said County of Howard, State of Indiana, this 16 day of March, 1981.

DONALD C. HOWARD, Sr., Clerk of
Howard Superior Court, Division II

/s/ Donald C. Howard, Sr.

CLERK'S CERTIFICATE

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

Cause 470

STATE OF INDIANA

vs.

PATRICK RAMIREZ

I, DONALD C. HOWARD, SR., Clerk of the Circuit Court, within and for the County of Howard and the State of Indiana, the same being a Court of Record having a seal, do hereby certify that the ATTACHED is a full, true and complete copy of COUNT I INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980, COUNT II INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980 AND THE BENCH WARRANT ISSUED FEBRUARY 22, 1980 IN THE ABOVE CAPTIONED CAUSE as the same appears upon the records of said Court in my custody as such Clerk and on file in my office.

This 13th day of March, A.D. 1981.

Signed [Signature illegible]
Clerk of Howard Circuit Court of Indiana

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs.

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT I

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant SGT. JACK ADAMS

Subscribed and sworn to before me this 6th day of February, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me,

/s/ Curtis C. Welke
CURTIS C. WELKE
Deputy Prosecuting
Attorney
62nd Judicial Circuit

List of Witnesses on Reverse Side

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs.

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT II

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant SGT. JACK ADAMS

Subscribed and sworn to before me this 28th day of January, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me,

/s/ Curtis C. Welke
CURTIS C. WELKE
Deputy Prosecuting
Attorney
62nd Judicial Circuit

List of Witnesses on Reverse Side

DEFENDANT'S EXHIBIT #4

STATE OF MICHIGAN

[SEAL]

William G. Milliken, Governor
DEPARTMENT OF CORRECTIONS
Stevens T. Mason Building, Lansing, Michigan 48913
Perry Johnson, Director

December 7, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana 46204 [Dec. 10, 1981]

Subject: Patrick Ramirez, Our #A163193

Dear Mr. Stanton:

This is in reply to your letter of December 2, 1981, in which you request verification that we have an Indiana detainer lodged against Mr. Ramirez.

On March 16, 1981, the Warden of this institution received a letter from Prosecuting Attorney Fred G. Osborn. Attached to that letter is a certified copy of information affidavits and arrest warrant on Patrick Ramirez, Howard Superior Court II, Cause Number 470, along with an arrest warrant. Count one is information for dealing in marijuana filed February 19, 1980, and count two information for dealing in marijuana filed February 19, 1980, and the bench warrant issued February 22, 1980.

Hopefully this information will be helpful.

Sincerely,

/s/ Michael Martemucci
MICHAEL MARTEMUCCI, Manager
General Office Services

MM/ms
cc Record File

NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300

December 11, 1981

Mr. Michael Martemucci, Manager
General Office Services
Department of Corrections
Stevens T. Mason Building
Lansing, Michigan 48913

Dear Mr. Martemucci:

Thank you for your letter of December 7, 1981. However, what we need to know is whether the Indiana detainer lodged against Mr. Ramirez, Cause No. 470, is the *only* one he has. In other words, am I correct in assuming there are no other detainers except for Cause No. 470? Thank you for your cooperation.

Sincerely,

/s/ Nile Stanton
NILE STANTON

NS/bk

STATE OF MICHIGAN

[SEAL]

DEPARTMENT OF CORRECTIONS

December 22, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana

Subject: Patrick Ramirez, Michigan #A-163193

Dear Mr. Stanton:

This is in reply to your recent letter dated December 11, 1981.

You are correct in assuming there are no other Detainers lodged in this institution other than Howard County, Indiana.

Hopefully the above information will be helpful.

Sincerely,

/s/ [Signature Illegible]

DEFENDANT'S EXHIBIT #5

MICHIGAN DEPARTMENT OF CORRECTIONS

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

AGREEMENT ON DETAINERS: Form I

In Duplicate. One copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

Inmate's name Patrick Ramirez

Number A163193

Institution SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untired indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said

prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court.

You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor

has not affirmatively consented to or ordered such delivery.

Dated: March 19, 1981

(Insert name and title of custodial authority)

Barry Mintzes

By: Warden

/s/ Barry Mintzes

Date received 3-19-81

Inmate's name

/s/ Patrick Ramirez

ATTACHMENT TO FORM I

You are further advised that by a decision of the United States Supreme Court in Cuyler vs Adams No. 78-1841 decided January 21, 1981, you have the right to judicial pretransfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ Sandra Phelps 3-19-81

Date

/s/ Patrick Ramirez

Received Date

DEFENDANT'S EXHIBIT #5A

MICHIGAN DEPARTMENT OF CORRECTIONS

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

AGREEMENT ON DETAINERS: Form I

In Duplicate. One copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

Inmate's name Patrick Ramirez

Number A163193

Institution SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untired indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said

prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court.

You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor

has not affirmatively consented to or ordered such delivery.

Dated: March 19, 1981

(Insert name and title of custodial authority)

Barry Mintzes

By: Warden

/s/ Barry Mintzes

Date received 3-19-81

Inmate's name

/s/ Patrick Ramirez

ATTACHMENT TO FORM I

You are further advised that by a decision of the United States Supreme Court in Cuyler vs Adams No. 78-1841 decided January 21, 1981, you have the right to judicial pretransfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ Sandra Phelps 3-19-81

Date

/s/ Patrick Ramirez

Received Date

CAUSE 424—MOTION TO DISMISS DENIED, JANUARY 26, 1982. (219)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 26th day of January, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Court having considered Defendant's Motion to Dismiss and having heard and considered evidence and having heard and considered arguments of counsel and having taken the matter under advisement now finds that said Motion to Dismiss should be and is hereby overruled.

• • • •

AGREEMENT ON DETAINERS—see appendix to petitioner's brief.

CAUSE 424—VERDICT DELIVERED MAY 17, 1982. (264-267)

Final arguments of counsel heard.

Final instructions read to the jury.

Jury retires to deliverate at 4:30 P.M.

Jury returns at 10:30 P.M. with verdict.

Jury finds the Defendant guilty in Cause No. 424 on Count I, II, and III as charged.

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT II

Cause No. 424

STATE OF INDIANA
vs.
PATRICK RAMIREZ

VERDICT

We, the Jury, find the Defendant, Patrick Ramirez, guilty as charged in the Information for Dealing in a Schedule IV Controlled Substance, Count I.

May 17, 1982
Date

/s/ Ronald H. Gardner
Jury Foreman

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT II

Cause No. 424

STATE OF INDIANA

vs.

PATRICK RAMIREZ

VERDICT

We, the Jury, find the Defendant, Patrick Ramirez, guilty as charged in the Information for Dealing in a Schedule IV Controlled Substance, Count II.

May 17, 1982
Date

/s/ Ronald H. Gardner
Jury Foreman

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT II

Cause No. 424

STATE OF INDIANA

vs.

PATRICK RAMIREZ

VERDICT

We, the Jury, find the Defendant, Patrick Ramirez, guilty as charged in the Information for Dealing in a Schedule IV Controlled Substance, Count III.

May 17, 1982
Date

/s/ Ronald H. Gardner
Jury Foreman

CAUSE 424—COMMITMENT DATED JUNE 8, 1982, SENTENCING PETITIONER TO THREE CONCURRENT TERMS OF FIVE YEARS AND FINING PETITIONER TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00). (424-426)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 8th day of June, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

State appears by Robert Bly.

Defendant appears in person and with counsel, Nile Stanton.

Steven Smith of the Adult Probation Department appears.

Court finds Defendant's true age to be thirty-seven (37) years.

Court finds that the basic sentence of five (5) years as a Class C felony is the proper sentence.

On Count I, Defendant is hereby sentenced to the Indiana Department of Corrections for classification and confinement for a period of five (5) years.

Court fines Defendant in the amount of Two Thousand Five Hundred Dollars ($2,500.00).

Defendant ordered to pay costs.

Count II, Defendant is hereby sentenced to the Indiana Department of Corrections for classification and confinement for a period of five (5) years to be served concurrently with the Count I sentence.

On Count III, court sentences Defendant to the Indiana Department of Corrections for classification and confine-

ment for a period of five (5) years to be served concurrently with Count I and Count II.

These sentences on Count I, II and III to be served consecutively to sentences imposed in Cause No. 470.

Defendant advised of rights to appeal.

COMMITMENT ORDERED.

JUDGMENT ON FINDING.

COMMITMENT

The Howard County Superior Court II

June 16, 1982

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

TO THE SHERIFF OF HOWARD COUNTY, Greeting:

BE IT REMEMBERED, that heretofore, to-wit: At a term of the Superior Court II of Howard County, in the State of Indiana, begun, holden and continued at the Court House in the City of Kokomo, on the 8 day of June, 1982, the same being the ..... judicial day of the ..... term, A. D....., of the said Superior Court II of Howard County, before the Honorable Carl E. Van Dorn sole Judge thereof, the following proceedings were had in the cause of

THE STATE OF INDIANA

vs.

PAT RAMERIZ

No. 424

Crime: Count I Dealing in A Schedule IV Controled Substance, Count II Dealing in A Schedule IV Controlled Substance and Count III Dealing In A Schedule IV Controlled Substance.

Comes now the State of Indiana, by Robert Bly, Deputy Prosecuting Attorney; comes also the defendant in person, and by counsel Nile Stanton and the Court finds that the defendant Pat Rameriz is Thirty-seven (37) years of age, and that said defendant is guilty of the crime charged, namely: Three Counts of Dealing In A Schedule IV Controlled Substance, Class C felony.

It is by the Court, therefore, ordered and adjudged that the said defendant for the offense by him committed, do make his fine to the State of Indiana in the penal sum of Two Thousand Five Hundred ($2500) Dollars, that he be imprisoned in the Indiana Department of Corrections for a period of Five (5) years on Count I, Five (5) years on Count II, to be served concurrently with the Count I sentence and Five (5) years on Count III to be served concurrently with Count I and Count II. These sentences to be served consecutively to sentences imposed in Cause Number 470, and be disfranchised and rendered incapable of holding any office of trust or profit for a term of . . . . years, and that he pay and satisfy the costs and charges herein, taxed at $61.00.

(The following paragraph is to be stricken out if the prisoner is not released on probation under suspended sentence.)

The court further finds that by reason of the character of said defendant, and the facts and circumstances surrounding the commission of said crime, the interest of society does not demand or require that the defendant shall suffer the penalty imposed by law if ..... shall hereafter behave well. It is therefore ordered by the Court that the execution of the sentence herein imposed be suspended during the defendant's good behavior, and that .... be permitted to go at liberty on probation so long as .... behaves well.

The sheriff of said Howard County is hereby charged with the due execution of the foregoing judgment.

.....Judge

CAUSES NOS. 424 & 470— JUDGMENT DATED JUNE 8, 1982. (1032-1033)

JUDGE: All right, Mr. Ramirez, on charge 424 you were found guilty on three counts of dealing in a Schedule IV Controlled Substance. It's my duty to sentence you. On, and on this count I find that the basic sentence of five years as a Class C felony is the proper sentence. Therefore, on Count I I sentence you to the Indiana Department of Corrections for classification and confinement for a period of five years. I fine you in the amount of $2500 and order you to pay costs. On Count II, I sentence you to the Indiana Department of Corrections for a period of five years for classification and confinement to be served concurrently with Count I, sentence. Count III, I sentence you to the Indiana Department of Corrections for classification and confinement for a period of five years to be served consecutively with Count I and Count II and order you to pay costs of the action. For that action once. On, cause rather, Cause 470 which is an information for dealing in marijuana, two counts which are Class D felony. The court will find that it should be handled as a felony and also finds that the basic sentence of two years is the proper disposition in that and will sentence you to the Department of Corrections on Count I for a period of two years for confinement and classification and costs of the action. Count II, sentenced to the Indiana Department of Corrections for classification and confinement for a period of two years to be served concurrently with Count I, two years. Cause No. 470 to be served consecutively with the sentence in Cause No. 424. You are given credit for two days spent in the Howard County Jail. COMMITMENT ORDERED, on both cases. JUDGMENT ON FINDING on both cases.

CAUSES NOS. 424 & 470—MOTION DATED AUGUST 10, 1982, TO CORRECT ERRORS. (1-4)

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

[Filed Aug. 10, 1982]

MOTION TO CORRECT ERRORS

Defendant Patrick Ramirez, by counsel, and pursuant to Rule 16, Indiana Rules of Criminal Procedure, respectfully moves the Court to correct the errors enumerated below, to order the defendant discharged, to grant him a new trial, and/or to allow the defendant all other just and proper relief.

In support of his motion, the defendant states as follows:

ERROR ONE

The Court erred in denying the defendant's pretrial "Motion to Dismiss".

Statement of the Grounds
Upon Which Error is Based

The defendant filed a timely motion to dismiss based upon the fact that the prosecution of the defendant was contrary to the laws of Indiana. The Court denied the motion and the defendant was convicted.

The Court's decision on this matter was erroneous. The State was given temporary custody of the defendant pursuant to the Interstate Agreement on Detainers, Ind. Code § 35-2.1-2-4 (1976). On March 16, 1981, the prosecutor's office lodged a detainer against the defendant who was then incarcerated at the State Prison of Southern Michigan. The detainer was based solely upon Cause No. 470, which consisted of two (2) counts of dealing in marijuana and a bench warrant issued on those charges.

The prosecution was not satisfied with using its temporary custody of the defendant for trying the defendant for Cause No. 470. The State also tried the defendant for three (3) counts of dealing in a Schedule IV controlled substance. The law in Indiana, however, clearly prohibits any prosecution of the defendant for any charges other than those contained in Cause No. 470. Subparagraph (d) of Article 5 of the Agreement on Detainers provides that the State's temporary custody of the defendant can be used "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, information of [or] complaints *which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.*"

The import of the aforementioned language is clear and must be interpreted in accordance with its plain meaning. Prosecution of Cause No. 424 clearly did not fall within the purview of the State's authority over the defendant. The State did not lodge a detainer based upon Cause No. 424 against the defendant. It is also

apparent that the charges in Cause No. 424 did not arise "out of the same transaction" which led to Cause No. 470. Cause No. 470 contains two (2) counts alleging dealing in marijuana. The alleged deliveries took place on December 17, 1979, and on December 21, 1979. The alleged acts of Cause No. 424 are not connected with those of Cause No. 470. Cause 424 is comprised of three (3) counts of dealing in a Class IV Controlled Substance (diazepam). The alleged deliveries of diazepam are to have taken place some nine months before the alleged delivery of marijuana in Cause No. 470.

There was no detainer based upon Cause No. 424. Cause No. 424 and Cause No. 470 did not arise out of the same transaction. The Interstate Agreement on Detainers cannot be interpreted by any stretch of the imagination to give the state authority to prosecute the defendant for Cause No. 424. The Court therefore erred in denying the defendant's "Motion to Dismiss".

ERROR TWO

The jury verdict was erroneous in that the evidence adduced at trial was not sufficient to support the conviction.

Statement of the Grounds
Upon Which Error is Based

All of the credible evidence adduced at trial demonstrated that the acts which constituted the information were initiated by an agent of the State of Indiana. The defendant, therefore, timely imposed the statutory defense of entrapment. The Court proceeded to instruct the jury as to the State's burden of proof concerning entrapment.

Although the jury was instructed that the State must prove the defendant's "prior disposition" beyond a reasonable doubt, the jury convicted the defendant. The aforementionend conviction is contrary to law in that there was absolutely no evidence adduced at trial which could rationally lead to the finding of prior disposition.

ERROR THREE

The trial court erred by failing to credit the defendant with all of the jail time to which he was entitled.

Statement of the Grounds
Upon Which Error is Based

The trial court erred in that the defendant should have been credited with all of the time during which he was incarcerated in the Howard County Jail with such time commencing on or about July 23, 1981, and concluding with defendant's sentencing. After the defendant's bail bond was withdrawn on another cause, the only purpose of the defendant's incarceration was the proceedings of the instant cause. Therefore, the trial court erred by not crediting the defendant with all of the jail time to which he was entitled.

WHEREFORE, defendant Patrick Ramirez, by counsel, pursuant to Rule 16, Indiana Rules of Criminal Procedure, respectfully moves the Court to correct the above-enumerated errors, to order the defendant discharged, to grant him a new trial, to correct his credited jail time, and/or to allow the defendant all other just and proper relief.

Respectfully submitted,

/s/ Nile Stanton
NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300
Attorney for Defendant

[Certificate of Service Omitted in Printing]

CAUSES NOS. 424 & 470—HEARING OCTOBER 21, 1982, MOTION TO CORRECT ERRORS. (1119-1156)

HEARING HELD 10-21-82

Motion to Correct Errors Hearing

JUDGE: This is State of Indiana versus Patrick Ramirez, 470 and 424. Mr. Stanton's filed a Motion to Correct Errors in both of the matters and the matter is set for argument today. Mr., the defendant appears in person and by Mr. Stanton. Mr. Bly appears for the State. Mr. Stanton?

MR. STANTON: Yes, Your Honor, as a preliminary matter I might mention that at the time of sentencing, I believed I urged the court to consider not attaching to the presentence investigation report copies of all of the taped transcripts of the various tapes. They were very voluminous and I indicated that some of them contained unrelated matters. And I simply urged that those not be sent along because it might prejudice possibly. But as a matter for the court's information, they were sent along with the presentence investigation report and everybody in the Department of Corrections wondered why and it just made for unnecessary paperwork. We just wanted to apprise the court of this fact and probably no useful purpose was served except to use up a lot of photocopy of the state's paper because all of this. . .

JUDGE: I'm missing you, sent along where?

MR. STANTON: To the Department of Corrections.

JUDGE: Oh. Yes.

MR. STANTON: The presentence investigation report that was submitted to the court had attached to it all of the various transcripts of tape-recorded conversations with many people, this cause and other causes. And we just had urged at the time of sentencing that a lot of this was inappropriate and irrelevant to send

all that along. And I forget exactly what the court ruled, but I think it was agreed that it wouldn't be done.

JUDGE: I don't remember it even coming up. I believe you that you brought it up.

MR. STANTON: We haven't assigned it as error and I don't know that it is error, but we wanted to indicate that that did, in fact, go along, and just wanted the court to be apprised of it. On the merits that we do have some slight evidence to introduce in support of error one, if we might. I'd like to have Pat Ramirez called as a witness and sworn so that we can show the court more precisely what we're talking about and have been with respect to the agreement on detainers. We'd like to swear Pat Ramirez to the witness stand. The court can hear. . .

JUDGE: We're talking again about the Michigan-Indiana issue?

MR. STANTON: Right. There is a. . .

JUDGE: We don't have enough evidence somewhere in the record on that, Mr. Stanton?

MR. STANTON: Here's what I'm not sure about, whether there is in this record a copy of the letter that was sent up to Michigan from Kokomo originally along with certified copies of the charges, the detainer itself is what we have. Now, there's been testimony about it, there's been reference to it. Whether the actual detainer and the warrant were put in the record, I don't recall. And, it was the whole issue has obviously been raised in a Motion to Dismiss and I would raise it here, but rather the full document was actually put into evidence. This is what Pat Ramirez was given. It might be in the record, but I just need to be sure. And to show Your Honor, there was no reference made to 424 charges, in Cause No. 424 which is what we maintained all along, but this is just my point.

JUDGE: Mr. Bly, do you have any independent recollection of whether those are in the record, the documents that Mr. Stanton has just mentioned, or perhaps,

even a better question, do you have any objection to them being in now?

MR. BLY: I think they've been brought before the court, Judge, by Mr. Ramirez, if nothing else, before he hired, which documents are you referring to?

MR. STANTON: It consists of a letter dated March 16, 1981, to the Warden of the State Prison of Southern, Michigan from Fred Osborn, the Prosecuting Attorney. Attached to that was a Clerk's certificate certifying count I and count II of two marijuana charges, the ones in Cause No. 470 to which Pat plead guilty. Also, contained, there's a certification to Count I, there's the Count II, there is a formal request for temporary custody from the State of Indiana. There is an advice of the agreement on detainers given to Pat, and presented to him. And there is a form that was signed by Pat. There is a letter referring to the detainers and then there's a copy of the bench warrant. And all that pertains to Cause No. 470 which is the two marijuana counts.

JUDGE: All of these papers you're saying were sent to Michigan at what time?

MR. STANTON: This was March the 7th.

JUDGE: No, not dates, accompanying what to do what?

MR. STANTON: Ok, this was an order for the State of Indiana to get jurisdiction over Pat Ramirez to bring him back under the agreement on detainers. And this was what was actually delivered up there in order to attempt to get jurisdiction. They, in fact, got jurisdiction on Cause No. 470, and we simply would like to offer this into evidence because it, while there's been testimony before on it, and I don't think there's really any serious dispute that he was read a detainer on 424, this simply just goes to actually documenting that. I don't think the State's taking the position that oh yes, he was read a detainer on 424. I think we all know he wasn't.

MR. BLY: I have no objection to the introduction of those documents and the fact that they speak for themselves. What they are is up to the court.

JUDGE: I think that, you know, putting them in at this time, the only problem that I have is that you know, we want to make sure we get the right ones and all of them that went at that time.

MR. BLY: Some of the documents might already be in the record, what was signed by the Clerk.

JUDGE: I wouldn't doubt but what all of them are. That would be my thought, but you know. . .

MR. STANTON: We just don't want the record to be confused. And I don't think the State maintains that, in fact, there was a detainer read on 424, I think the State knows there wasn't. But we also can confirm that in writing.

JUDGE: Well, regardless, you know, I want you to be satisfied that what he's got there are the, you know, copies. True copies, this sort of thing. Once you're satisfied with that, why, they can sure go on.

MR. BLY: I have no objection with the letter here because it's obviously got Mr. Osborn's signature, copy. I have one in my file. The Clerk's Certificate is a matter of record anyway. The information obviously we have.

JUDGE: Go over them and see if you're satisfied.

MR. BLY: There's only three things in this group that I would have any question about because everything but these three things are a matter of public record. One is the Michigan Department of Corrections Notice of Indictment, Information or Complaint and of Right to Request Disposition. I don't know that this is in the record. It appears to be signed by Mr. Ramirez and an individual by the name of Barry Mensis. If Mr. Ramirez is willing to testify under oath that this is a copy of what this pertains to be, I have no difficulty with that. I would object to the introduction of this without some kind of explanation. There's also an attachment to form

one which I'm assuming which purports to be signed again by Mr. Ramirez and another person by the name of Seralla Phelps, simply stating that it's. . . .

JUDGE: Mr. Ramirez, don't you remember putting all of this into evidence at least one or two other times?

A I can't remember.

JUDGE: You can't remember?

MR. STANTON: We just wanted to be sure.

JUDGE: Yes, ok, I understand.

MR. BLY: Then there's a letter of March 19 that's directed to somebody, to Deputy Case and I would object to that because that purports to state by a Sandy Phelps to somebody else what she thinks all this is, and I don't know whether that's worth anything other than just a little extra piece of paper.

MR. STANTON: It was part of what was presented to Mr. Ramirez.

MR. BLY: Again, if Mr. Ramirez is going to testify he received these documents and that these are exact copies, for what they're worth, I have no objection. But as to their being proof positive of this position, I don't, let them speak for themselves.

MR. STANTON: Your Honor, can the witness be sworn?

JUDGE: Sure. Do you swear that you'll tell the truth and nothing but the truth in this matter so help you God?

A I do.

PATRICK RAMIREZ,

after being first duly sworn to tell the truth deposes and says:

DIRECT EXAMINATION

QUESTIONS BY MR. NILE STANTON, DEFENSE COUNSEL

Q Would you state your name for the record please?

A Patrick Ramirez.

Q And you're one in the same Patrick Ramirez that is the defendant in this cause, are you not?

A Yes, I am.

Q I'll show you what's been marked for identification purposes as Defendant's Exhibit A and ask you if you recognize this document which has staples up at the top of it?

A I do.

Q And what are these documents?

A This is a certified letter from the prosecutor of Howard County.

Q Let me ask you this, when did you get these?

A March 17th.

Q Ok, of 1981?

A Yes.

Q And is this what you were given, were you given all of these when you were served the detainer, did this constitute the detainer that you were served up in Michigan?

A Yes, it does.

MR. BLY: Your Honor, I'm going to object to his reference to it as a detainer. I don't think the witness is qualified to answer what it is.

Q Excuse me, are these the documents that you were given and read up in the State of Michigan?

A Yes, they were.

Q And were you asked to sign something to agree to come back to Indiana to face trial on certain charges?

A Yes, I did.

Q And do these constitute the full and complete documents that you were given advising you as to what charges you were facing?

A Right.

Q And within those documents that you signed and agreed to come back under the detainer act on, were there any references to Counts I through III in Cause No. 424 pertaining to diazepam?

A No.

MR. STANTON: Your Honor, at this time we would offer into evidence, Defendant's Exhibit A?

JUDGE: Mr. Bly?

MR. BLY: I have a few preliminary questions.

JUDGE: All right.

PRELIMINARY QUESTIONS BY MR. BLY, PROSECUTING COUNSEL

Q Mr. Ramirez, the documents, these documents are all copies, right?

A Right.

Q I'm going to specifically call your attention to the documents that I made reference to earlier, Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition. Is this a copy of a document that you signed?

A Yes, it is.

Q Is that your signature that appears on that?

A Yes, it is.

Q Did you read this before you signed it?

A Yes, I did.

Q Ok, and this was signed in Michigan, is that correct?

A Yes.

Q At the time you signed this were you incarcerated in the prison at Michigan?

A Yes, I was.

Q Serving a term up there, is that correct?

A Yes.

Q And this attachment, Form 1, is that your signature that appears on there?

A Yes, it is.

Q And that is a copy of that document?

A Right.

Q And you're waiving the pre-transfer hearing of this case, you understood that you were waiving the pre-transfer hearing because of Kyler vs. Adams?

A Right.

Q Do you understand the rights that Kyler vs. Adams would have given you?

A Yes, I do.

Q Those were explained to you?

A Yes.

Q You fully understood them at the time you signed them?

A Yes.

Q And you agreed to waive them?

A Yes, I did.

Q And that's what that is?

A Right.

Q Now, I don't know what this is, who's Deputy Case?

A A deputy at the Southern Michigan Prison.

Q Who's Sandy Phelps?

A She's a court reporter, you know.

Q Ok, now, this wasn't, this letter, this notice, just to him from her, is that right?

A See, each one goes to counselor, and then I get one.

Q Ok, and that's just a note that you got a copy of it?

A Right.

Q How did you get this?

A They took me in front of the office and the signature you was inquiring back there, Barry Mintz, he is the Warden of Southern Michigan Prison, and I went in front of him and two other team board members. At that time they stated that I was charged with dealing in marijuana, counts I and II, Cause No. 470. They asked me at that time, I could have a hearing to fight extradition. I said no, I'd just waiver my rights. So, I waivered my rights and went back to the State of Indiana for the marijuana charges, Count I and II, 470 Cause.

Q You did sign these and you did understand what they were?

A I sure did.

MR. BLY: I have no objection.
JUDGE: Be admitted.

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. NILE STANTON:

Q Pat, I'll show you what's been marked for identification purposes as Defendant's Exhibit B and what's been marked for identification purposes as Defendant's Exhibit C, and I ask you first of all, do you recognize those?

A Yes, I do.

Q I, acting on your behalf, did you cause your counsel to contact the Department of Corrections in Michigan to ascertain whether or not there were any additional detainers lodged against you other than in Cause No. 470?

A Yes.

Q And you recognize those letters as being copies, true and accurate copies of the letters which purport to be from the Department of Corrections, State of Michigan, as a result of your counsel's request?

A Yes.

MR. BLY: Your Honor, I'm going to object to the introduction of these because they purport to be letters not to Mr. Ramirez, but to Mr. Stanton. One letter appears to be a response to a letter that Mr. Stanton purportedly wrote. We don't have the letter. All we can do is assume that the letter says what the response says it does. I don't think it's relevant.

MR. STANTON: Your Honor, I could put these in as documents obtained by me. My letters aren't relevant. One letter we simply wrote the Department of Corrections in Michigan on December the 2nd of '81 asking to verify about the detainers. They sent us back a letter saying yes, he was served a detainer on thus and so a date, Cause No. 470 in the counts pertained to marijuana. And we had asked them to tell us if there were any others, but they didn't answer it in the first letter.

They just said yes there was a detainer in Cause 470. Ok, so we wrote them back and we said on December the 11th, which they referred to in their other letter and we asked them if we could correctly assume that there weren't any others. And they just said you are correct in assuming there are no others. Ok, cause that's the information we wanted. We just wanted some kind of confirmation. Now, these are in fact addressed to me. They bear on their face, they purport to be what they obviously are. They're letters addressed to me as his lawyer. They're representations made by the Department of Corrections. I suppose I could take the witness stand and verify they are the true and accurate, the actual letters that I received from the Department of Corrections in response to my request for information about the detainers. I just wanted the record to be real clear that there weren't any others. And how you affirmatively show something doesn't exist, the only way I know to do it.

JUDGE: We'll admit them.

MR. STANTON: We have no further questions, Your Honor. We have no further witnesses.

JUDGE: Anything else, Mr. Bly?

CROSS EXAMINATION

QUESTIONS BY MR. ROBERT BLY:

Q Mr. Ramirez, at the time you were brought back you were represented by another attorney, were you not?

A Yes, I was.

Q Who was that attorney?

A Jeffrey Lockwood.

Q At the time that you were brought back here were you not engaged through him with the State of Indiana in a plea bargain?

A No, I wasn't.

Q You weren't?

A No.

MR. STANTON: Your Honor, I object on relevancy grounds. I don't see how that has to do with the agreement on detainers.

MR. BLY: If the court will permit me, I hopefully can show a foundation here where I'm going with this. This is why he was brought back in the first place.

JUDGE: Hey, you know, I don't want to go through this thing four, five different times. I understand that you gentlemen like to do it, but I don't. You know, we've done it. Now, what's the gist of this now, Mr. Bly?

MR. BLY: Well, all we have to do is look at the plea bargain, and we can see . . .

Q Mr. Ramirez, you did sign the plea bargain?

A Yes, I did.

Q We can look at the plea bargain, we can read it, and we can see precisely what Mr. Ramirez . . .

JUDGE: It's in the record, isn't it?

MR. BLY: Right, it's in the record. I'll withdraw the question. I have no further questions.

MR. STANTON: Your Honor, the only reason for wanting to introduce additional evidence was that we wanted to be clear that there weren't any speculation.

JUDGE: I understand fully why you did it.

MR. STANTON: Thank you, we would at this time make our argument as brief and to the point as possible. We respectfully submit that the court erred in denying the Motion to Dismiss. First of all, briefly, I would like to remind the court and the state of some presumptions of law. First of all, we have a presumption of law that if there is a common law, there's no statute, the common law prevails. In this case there is a statute. Statutes are presumed to be valid, and they are to be strictly construed, and the State, throughout the states, wherever there are different state laws, they are to be strictly construed. Now, generally, your language in interstate acts is more general than what it is in other acts so you can get all the states to agree on it. The statutes are to be strictly construed, and normally your interstate acts are

kind of general language because that's the way you have to draft them to get the states to agree on them. The interstate act on detainers though is very specific in several respects, and we should remember the purpose of it. The purpose of it is to, a long time ago you would have law enforcement agencies go outside their jurisdiction and just get somebody. Maybe they'd been there for a year or two or three and they'd kind of gotten established in the community, and the people were getting upset when this law enforcement agent is driving across several state lines and getting somebody without anything, and taking them some place and nobody knew what was going on. And the purpose of this was to try to get some kind of general agreement on what to do. So, Indiana and Michigan have both, and are among the many signatory states of the agreement on detainers. Now, the agreement on detainers which we have a copy of, Your Honor, is very specific. And we would direct the court's attention to Article 5, Section D specifically, and it's found at the Indiana Code Section 35-2.1-2-4, and I might add that the language of the statute is directly quoted to Mr. Ramirez in Defendant's Exhibit A which were the detainer documents that he received. Michigan gave him notice of what his rights and duties were. And here's the agreement that he signed. He said and it's just straight, reflects the language of the statute. It says, "your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed." Ok. Now, that's what he was told. The act specifically, and we have a copy of it, we quoted it in our Motion to Correct Errors on page two. The second page of the Motion to Correct Errors, Your Honor, we quote the act. The language that we quoted is straight from the detainer act. And this is what, here's the custom that's referred to, and we draw the court's attention

to the fact that what the court has in Defendant's Exhibit A here is the temporary custody clearly, it's the temporary custody that's referred to. In fact, up at the top of it, one of these it says, "Agreement on Detainers, Form One" and it shows that this is a request for temporary custody. As a matter of fact, the prosecutor in his letter referred to the fact. The definition under Article 5, Section D says "the temporary custody referred to in this agreement shall be", and if there's any question about the clear language of this act at some point, I would invite the prosecutor of the court to, if it's not clear, I'd like to know on what point. It says "the temporary custody referred to in this agreement shall be only, only for the purpose of permitting prosecution on the charge or charges", in this case charges because there were two counts on the marijuana stuff, "charges contained in one or more untried indictments", there could be other untried indictments, informations or complaints which fully form the basis of the detainer". Which form the basis of the detainer or detainers. "Or for prosecution on any other charge or charges arising out of the same transaction". Now, in this case, 470 was the basis, was the sole basis for the detainer. That's all he did. That's all he signed or anything. And then when he came down here, 424 was lodged against him, and those don't arise out of the same transaction. Nobody can pretend that they do. If those pertain to counts that were brought charges nine months earlier. Nine months earlier on diazepam. And what the state did was they brought him down on that, and it's a clear violation of the act. There's no question about it. There's no statutory confusion or ambiguity at all. I would respectfully remind the court that where there is a vagueness in the statutory law pertaining to criminal cases, if it's a question of interpretation, the question is supposed to be resolved in favor of the accused. In this case there's not even a question of vagueness in this statute. The statute is clear. Under the common law, we'd acknowledge, that

if you have custody of the person, you got them, you have jurisdiction. You have jurisdiction over the person. That's common law. That's like case law. For years. But we do have a specific statute now, and there's no finding. Nobody's pretending this is unconstitutional or that somehow the court decision to supervene this. There's nothing saying that all anywhere. There's no case in the State of Indiana that says that oh, that clear language means something or other than what it says. There's no case at all. And I know the state would be unable to show the court any. We do ask the court to note the documents which we've introduced. We've demonstrated to the court that there never was any detainer on 424 read on Pat. He did come back here on 470. He plead guilty on 470. He has two valid, legitimate marijuana convictions pursuant to a guilty plea. He was sentenced to two years on each one and that's the time he should serve. What should happen, is those other charges should be dismissed. Pat Ramirez should be allowed to go back to the State of Michigan where he has been granted parole and he would be on parole in the State of Michigan because he would be discharged under the marijuana counts. That's what should happen to Pat Ramirez today. The other area, error two, simply maintains that there was not sufficient evidence on the proof of entrapment. That obviously, we say that there is no proof of prior disposition on that. And the only prior disposition evidence came from their own informant, and we believe that that should be insufficient as a matter of law because he said he had previously been dealing drugs, or getting drugs from Pat Ramirez. And yet allegedly, the government sent him in there for some different matter and coincidentally he got drugs from Pat this time. Now, we submit that there should be some other proof of prior disposition other than the informant. We think that there, that should be insufficient as a matter of law. The third error is simply a matter of computation. The third one is that when Pat Ramirez, and that just has to do

with sentencing. When he came down here, the bond was taken off of him on July 23, 1981. And at that time we maintain that his time from July 23, 1981 up to sentencing should be credited on his sentence. He was not on bond. He was incarcerated here. He was maintained here at the request of the State of Indiana. He was not held in pursuant to a Michigan order. They said they wanted him back to parole him. Indiana didn't give him back and Pat should get the time credited towards his sentence since then. In any event, Your Honor . . .

JUDGE: Mr. Stanton, if the court thinks that that's an error, do we remedy that just by sending another letter to the Department of Corrections and saying that we've refigured it, and we think he should get credit for x-more days.

MR. STANTON: Right, the way that would be corrected, Your Honor, would be to sign an amended commitment or a supplemental commitment order just clarifying the matter of the time to be credited. As a matter of fact that's something that is going to have to be done anyway, because in the commitment orders, the copies that we have reflect that there was no time given to Pat and we know that's wrong. This reflects none. The court had given him some, I forget how many, two, or I don't know what it was.

A Right here they say two days and on this one it says 27 days.

MR. STANTON: On one cause number and commitment, there was one day stated, Pat's right, and then on another one two on one and twenty-seven on the other and we believe that they're both incorrect. That's just a matter of . . .

JUDGE: You're asking for how many days?

MR. STANTON: 331 days, Your Honor. That would be from July 23, 1981, up to the date of sentencing which would be August the 17.

JUDGE: And the July 23, 1981, is what date, what happened to Mr. Ramirez then?

MR. STANTON: That is the date that the bail was taken off. He had previously posted bail. And the bail bond was withdrawn on that other cause in order that incarceration would count on his time that he served.

JUDGE: Ok, and he was in this county at that time?

MR. STANTON: Yes, he was, in the Howard County Jail.

JUDGE: July 23, 1981, and the bond on him, on other case was withdrawn and we gave him his money back or, cancelled the bond?

MR. STANTON: That is correct, Your Honor. The net effect of the Motion to Correct Errors, Your Honor, is to respectfully urge the court to simply strictly construe, follow the clear language of the detainer and to correct the error that was made in denying the Motion to Dismiss, correct the sentence that Pat Ramirez has, the sentencing date, the credit time dates, and that totals up, he would be, with good time he would be out of the marijuana charges and be allowed to be released to the parole authorities to the State of Michigan because he has been ordered back to report for parole. He's supposed to report to the Bureau of Field Services, Third Floor, Stevens T. Mason Building in Lansing, Michigan, pursuant to parole up there. In any event, Your Honor, we do urge the court to seriously consider the error assigned as one. If we know that there are no decisions on that. The thing of it is, it's the clear statutory language says that we're right. And if the court, if this is going to get up into the posture of an appellate court, we urge the court, we hope the court would be affirmed. And the state's appeal, the state would take it up, and we believe the court would be affirmed by granting the motion at this time. Thank you.

JUDGE: Mr. Bly.

MR. BLY: May it please the court and Mr. Stanton, I too, am a little tired of arguing this issue since it's already been decided at the Motion to Dismiss. I think the court's ruling in that case was correct. I strongly disagree with Mr. Stanton's and Mr. Ramirez's position as

set out in his Motion to Correct Errors. As to the what I'll call the secondary arguments that the verdict was not sufficient, I think that the record speaks for itself on that. I don't think there needs to be any discussion on that. The issue of entrapment, that instruction was given and I don't believe that the jury had any difficulty with that, there was sufficient evidence. I don't think that that needs to be gone into. I do have some problem with the argument on credit time. First of all, I'm not altogether sure that credit time is something to which this court is required to address itself. I think that's more a question for the Department of Correction, but since it has been brought up and since it has been raised, I would cite the court to a very recent Court of Appeals case Burnett vs. State which is reported at the Indiana Appellate Court Case 439 N.E. 2nd, 174. It just came out in this week's advance sheet. Very briefly this case involved a detainer a gentleman was brought from Ohio to Indiana just like Mr. Ramirez. And he seemed to feel that he should be given credit time based upon his sentence in Ohio as I read the case. The court of appeals didn't go along with that and held that the defendant was not entitled to credit on the Indiana sentence for time served on the Ohio sentence after Indiana filed a detainer against him. And until the date Indiana obtained temporary custody, but he was entitled to credit for five days confinement in Indiana before he was re-delivered to Ohio. It says there is no constitutional right to serve concurrent sentences for separate crimes in Indiana. It says making a sentence on Indiana charge consecutive to Ohio charge is authorized by statute. I would urge the court to read that for how it pertains to this case. I think it might give the court some insight on credit time. The state's position on the credit time is, has always been that while Mr. Ramirez was here he was, in effect, serving his sentence in Michigan. The fact that they, he has still not been given parole is not a question for the State of Indiana, but rather a question for the State of Michigan as it relates to Mr. Ramirez.

Finally, I'll address myself to the error that's alleged in error number one. I think Mr. Stanton and Mr. Ramirez have spent a great deal of time discussing and arguing as we argued back in February. I call the court's attention to a number of things that have been cited in the statement of errors. One of which, the clerk's certificate and the letter of March 16, 1981, somehow constitute a detainer. The court has before it, and probably in a lot of places in the record a multitude of these detainers or forms that I call interstate agreement on detainers. And the reason I call them that is that's what's at the top of them. Now, I don't have the cases because quite, frankly, Judge, there are no cases that I can find that are directly on point on this in Indiana at least. But I would call the court's attention to the fact that there are some documents in, and the very things that Mr. Stanton submitted this morning, one is called Form Five, Agreement on Detainers. I happen to have a copy of that and it says Gary Mensis, etc., and the court can read that, signed by Mr. Osborn, it's also signed by Your Honor requesting Mr. Ramirez's presence here for a trial. And it reads Count I, II and III, dealing in marijuana, in Cause No. 424. I think that might have been a typo because my records show that 424 is dealing in schedule IV Controlled Substance. And then there's evidence of agent's authority to act signed by Mr. Osborn, Prosecuting Attorney. This was filed and dated, the date of the request was June 16, 1981. I believe Mr. Ramirez was actually delivered to the Sheriff on July 23, 1981. And shortly thereafter, appeared in court and filed the Recommendation of Plea Bargain which again is in the record, signed by him, Mr. Welke who was my predecessor and Mr. Lockwood who was Mr. Ramirez's then attorney. The plea bargain again speaks for itself. And it also agrees, sets out that the State agrees to dismiss all other counts now pending this action and all other causes of action now pending in Howard County. That's subsection D. Now, fortunately, or unfortunately as the case may be, Mr. Ramirez, as the

record will show, on the date that this matter was set for sentencing withdrew his plea agreement so the plea agreement, I suppose, has no substance as far as what effect it would have as to sentencing and whether it's binding to Mr. Ramirez. But the plea agreement does show one thing that when taken into consideration with all other things, I think it shows what was going on in Mr. Ramirez's mind. When Mr. Ramirez was brought back here in July of 1981, he certainly felt at least at the time he signed this, he certainly felt that this plea agreement would dispose of everything including 470. Now, he may stand up and say that he didn't which wouldn't surprise me, but again we have a document. Another document which Mr. Ramirez signed and is in the record again for about the third time, is the waiver that he signed in Michigan. Now, I would urge the court to read that waiver, because I don't know the exact word, but for some reason it's saying that he understands and he testified that he understood that he's going to come back and that this gives the State of Indiana or whoever, the requesting state the authority to try all untried indictments or informations. Now, I don't know the exact words, but I think Mr. Ramirez helped to point it out by underlining it in red. I would call that to the court's attention too. That is pretty much the language of the statute, of the agreement on detainers. It seems to me that Mr. Ramirez is coming along and he's arguing a conclusion of law, and he's saying this warrant of this clerk's certificate, this letter from some Phelps lady to a deputy, this is somehow a detainer. And that this detainer was lodged in March of 1970. I'm sorry, the detainer was on Number 470 lodged in March of 1981, but somehow that is the detainer. Well, I can play that game too, Judge. I say Mr. Ramirez says it is a detainer just because they say it's a detainer, I'm going to say it's not a detainer because the detainer is on the form, agreement on detainers, form five and form six. So, we can sit here and we can argue forms, and we can argue what a deputy Sheriff in Michigan might have

thought and we can argue what Mr. Ramirez thought, but the question is, why was he here. What happened here. What did we spend five or six days doing in this court back in May? Clearly, I don't think, I think if you interpret the agreement on detainers the way Mr. Ramirez would have us believe it, it would almost profit someone to break the law in another state, especially if he was under indictment in one state. And the reason I'm saying that is because the whole purpose, and if you read the text on agreement of detainers, Article I specifically sets out, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. You go back to Article Nine, the agreement, section one, this agreement shall be liberally construed so as to effectuate its purpose. Liberally construed. I think maybe Mr. Stanton and Mr. Ramirez are confused, and if I said this I apologize, I don't mean to be insulting, possibly confusing the detainer act with the extradition act. Extradition as I understand it, they are similar, but not the same. And I think the gentleman from the Attorney General's office, he was here in February when we argued the Motion to Dismiss made a good point. An extradition involves the right of an individual to be returned to a state where he's not in custody, where he's not serving time. A detainer, in effect, as I understand it, comes along and says Mr. Ramirez, you're in prison in Michigan, now you don't have to return to Indiana until your time is done, but we're going to bring you back under this detainer. In other words, it's between Indiana and Michigan. I'm saying simply that the State would disagree first of all that the March 16, '81 paperwork is a detainer. I don't believe that it is a detainer. I don't believe there's any way that you can feel that this is a detainer. Secondly, all untried indictments and informations would mean 470, 424 and anything else we got pending here. So, I would respectfully urge

the court to deny the Motion to Correct Errors. We've been over this ground before. I don't see where rehashing it and redoing it is going to serve any purpose at all and we would respectfully request the the motion be denied. Thank you.

JUDGE: Thank you gentlemen.

MR. STANTON: The state's maintaining that that is not a detainer and that that, I know we've been over it before, however, we tried today to make it real perfectly clear what we're doing. And the state maintains that's not a detainer. That just amazes me because the Department of Corrections of the State of Michigan said it was a detainer. The documents he was asked to sign says that this is pursuant to the interstate act on detainers. And it clearly does, Your Honor. This is a detainer and we urge the court to strictly construe that and we understand it's to be liberally construed, but it says prosecution on the charge or charges for which form the basis of the detainer and there was none. We do urge the court to give effect to that language. As the prosecutor submitted, there's no decision and we ask the court to follow the plain language of the statute. Thank you very much.

JUDGE: Thank you, I'll take it under advisement.

AND NO FURTHER PROCEEDINGS WERE HELD IN THIS CAUSE ON THIS DATE.

DEFENDANT'S EXHIBIT A

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

March 16, 1981

Gary Mintzes, Warden
State Prison of Southern Michigan
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana
Vs: Patrick Ramirez (Jackson DOC#A16D3193)
Howard Superior Court II, Cause #470

Dear Warden Mintzes:

Enclosed please find certified copies of our Information Affidavits and Arrest Warrant on the above named individual. Please file these documents as a detainer on our behalf against Mr. Ramirez.

It is our understanding, through defendant's attorney, that Mr. Ramirez will be willing to sign a waiver (Form II) in this matter.

Please note the Court's address as follows: Howard Superior Court, Division II, Third Floor, Courthouse, Kokomo, Indiana 46901.

If you require further information, please feel free to contact my office.

Yours truly,

/s/ Fred G. Osborn
FRED G. OSBORN
Prosecuting Attorney

Enc.

cc: Mr. Jeffrey A. Lockwood,
Defendant's Attorney

FGO/m.

[Filed Apr. 14, 1980]

CLERK'S CERTIFICATE

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

Cause 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

I, DONALD C. HOWARD, SR., Clerk of the Circuit Court, within and for the County of Howard and the State of Indiana, the same being a Court of Record having a seal, do hereby certify that the ATTACHED is a full, true and complete copy of COUNT I INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980, COUNT II INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980 AND THE BENCH WARRANT ISSUED FEBRUARY 22, 1980 IN THE ABOVE CAPTIONED CAUSE as the same appears upon the records of said Court in my custody as such Clerk and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, at the City of Kokomo, Indiana, this 13 day of MARCH A.D. 1981.

/s/ Donald C. Howard, Sr.
DONALD C. HOWARD, SR.
Clerk of Howard Circuit Court
of Indiana

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT I

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez, late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made

and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant Sgt. Jack Adams

Subscribed and sworn to before me this 6th day of February, 1980.

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT II

INFORMATION FOR
DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez, late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such

cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant Sgt. Jack Adams

Subscribed and sworn to before me this 28th day of January, 1980.

REQUEST FOR TEMPORARY CUSTODY

Gary Mintzes, State Prison of Southern Michigan, 4000 Cooper Street, Jackson, Michigan 49201.

Please be advised that Patrick Ramirez, #A16D3193, who is presently an inmate of your institution, is under [information] in the 62nd Judicial Circuit, of which I am the Prosecuting Attorney, said inmate is therein charged with the [offenses] enumerated below:

Offense

Counts I, II and III Dealing in Marijuana, under Cause #424, Howard Superior Court II

I propose to bring this person to trial on this [information] within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return this prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

Signed: /s/ Fred G. Osborn

Title: Fred G. Osborn,
Prosecuting Attorney
62nd Judicial Circuit,
State of Indiana

Dated: June 16, 1981

Signed /s/ Carl E. Van Dorn
(Judge)
CARL E. VAN DORN
Howard Superior
Court II

cc: Patrick Ramirez
Marge Barker, Agreement Admin. (IN)
Earl H. Nill, Agreement Admin. (MI)
Honorable Carl E. Van Dorn

MICHIGAN DEPARTMENT OF CORRECTIONS

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

CSO-221A Rev. 6/80

AGREEMENT ON DETAINERS: Form I

In duplicate, one copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

Inmate's name Patrick Ramirez

Number A163193

Institution SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request,

together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court.

You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

Dated: March 19, 1981.

(Insert name and title of custodial authority): Barry Mintzes.

By: Warden /s/ Barry Mintzes

Date received 3-19-81

Inmate's name /s/ Patrick Ramirez

ATTACHMENT TO FORM I

You are further advised that by a decision of the United States Supreme Court in Cuyler vs Adams No. 78-1841 decided January 21, 1981, you have the right to judicial pretransfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ Sandra Phelps

/s/ Patrick Ramirez

Received Date

March 19, 1981

Deputy Cason:

re: 163193 Ramirez, Patrick

The Howard County, Indiana, prosecutor has lodged a detainer against Mr. Ramirez, charging him with two counts of delivery of marijuana and one bench warrant.

/s/ Sandy Phelps
SANDY PHELPS

smp
cc: Counselor
RO Folder
Resident
Lansing RO

Bond $50,000.00

BENCH WARRANT
SUPERIOR COURT II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Mar. 10, 1980]

Curtis Welke
Deputy Prosecuting Attorney

STATE OF INDIANA, HOWARD COUNTY, ss:

The State of Indiana to the Sheriff of Howard County, Greeting:

You are hereby commanded to arrest Patrick Ramirez if he may be found in your bailiwick, so that you have his body before the Judge of Superior Court II of Howard County, instanter, and then and there to answer the State of Indiana on charge of Count I Dealing in Marijuana and Count II Dealing in Marijuana and abide the order of the Court thereon, and return this writ.

WITNESS, The Clerk and Seal of said Court this 22 day of February, 1980.

/s/ Donald C. Howard, Sr., Clerk
DONALD C. HOWARD, SR.

Sheriff's Return

DEFENDANT'S EXHIBIT B

STATE OF MICHIGAN

[SEAL]

DEPARTMENT OF CORRECTIONS

Perry Johnson, Director

December 7, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana 46204

[Dec. 10, 1984]

Subject: Patrick Ramirez, OUR #A163193

Dear Mr. Stanton:

This is in reply to your letter of December 2, 1981.

On March 16, 1981, the Warden of this institution received a letter from Prosecuting Attorney Fred G. Osborn. Attached to that letter is a certified copy of information affidavits and arrest warrant on Patrick Ramirez, Howard Superior Court II, Cause Number 470, along with an arrest warrant. Count one is information for dealing in marijuana filed February 19, 1980, and count two information for dealing in marijuana filed February 19, 1980, and the bench warrant issued February 22, 1980.

Hopefully this information will be helpful.

Sincerely,

/s/ Michael Martemucci
MICHAEL MARTEMUCCI, Manager

DEFENDANT'S EXHIBIT C

STATE OF MICHIGAN

[SEAL]

William G. Milliken, Governor

DEPARTMENT OF CORRECTIONS

Stevens T. Mason Building, Lansing, Michigan 48913

Perry Johnson, Director

December 22, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana 46204

Subject: Patrick Ramirez, Michigan #A-163193

Dear Mr. Stanton:

This is in reply to your recent letter dated December 11, 1981.

You are correct in assuming there are no other detainers lodged at this institution other than Howard County, Indiana.

Hopefully the above information will be helpful.

Sincerely,

/s/ Michael Martemucci
MICHAEL MARTEMUCCI
General Office Services Manager

MM:jt

cc: Record Office File

CAUSES NOS. 424-470—MOTION TO CORRECT ERRORS DENIED OCTOBER 26, 1982. (445)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 26th day of October, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Court having heard evidence and arguments of counsel now finds that Motion to Correct Errors should be and is hereby overruled.

* * * *

OPINION OF THE COURT OF APPEALS OF INDIANA

IN THE
COURT OF APPEALS OF INDIANA
SECOND DISTRICT

No. PS 518

PATRICK RAMIREZ, APPELLANT
(Defendant Below)

v.

STATE OF INDIANA, APPELLEE
(Plaintiff Below)

[Filed Oct. 26, 1982]

APPEAL FROM THE HOWARD SUPERIOR COURT, NO. II
THE HONORABLE CARL E. VAN DORN, JUDGE
CAUSE NO. 424 & 470

SHIELDS, J.

Patrick Ramirez (Ramirez) appeals pro se his convictions under I.C. 35-48-4-3 (Burns Code Ed., Repl. 1979) of dealing in a schedule IV controlled substance. Ramirez raises the following issues:

1) whether the trial court erred in denying his pretrial motion to dismiss the information for failure to comply with the agreement on detainers (Agreement), I.C. 35-2.1-2-4 (Burns Code Ed., Repl. 1979) (repealed 1982); recodified as I.C. 35-33-10-4 (Burns Code Ed., Supp. 1982),

2) whether there was sufficient evidence to support his convictions;

3) whether the trial court committed fundamental error by ordering Ramirez to serve his sentences consecutively; and

4) whether the court erred in calculating his credit time for the days he spent confined awaiting trial sentencing.

On March 20, 1979, Ramirez was charged by information, Cause 424, with three counts of dealing in a schedule IV controlled substance, a class C felony. The incidents on which the charges were based occurred January 28, 1979, March 9, 1979, and March 12, 1979. Then, by a two-count information dated February 6, 1980, Ramirez was charged under Cause 470 with dealing in marijuana, a class D felony, on December 17, 1979 and December 21, 1979. This appeal concerns Cause 424.

The second reveals Ramirez was serving a sentence in March 1981 in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 62nd Judicial District, Howard County, Indiana mailed the warden of the State Prison of Southern Michigan certified copies of the *two*-count information in Cause *470*, dealing in marijuana, requesting the information be filed as a detainer against Ramirez. On June 23, 1981, the prosecutor followed up by mailing an Agreement on Detainers Form V notifying the State Prison of Southern Michigan that Ramirez was charged in Howard Superior Court II with *three* counts of dealing in marijuana under Cause *424*.

The Michigan warden notified Ramirez by Michigan Department of Corrections Agreement on Detainers Form I that an untried Howard County, Indiana information in two counts of dealing in marijuana had been brought to his attention by the Indiana prosecutor. After he was informed of the provisions of the interstate agree-

ment on detainers, Ramirez signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana.

I.

Ramirez' first issue presents two questions: 1) whether his presence in Indiana was obtained under the Agreement, I.C. 35-2.1-2-4, on the basis of Cause 424, three counts of dealing in a controlled substance, and 2) if not, what remedy exists for the State's failure to follow the provisions of the Agreement.

The Agreement is a uniform law enacted by the majority of the states and the federal government.[1] Its purpose is to encourage the expeditious and orderly disposition of outstanding charges and detainers based on untried indictments and information against prisoners. I.C. 35-2.1-2-4, Article 1. The Agreement provides a method by which an imprisoned individual may seek final disposition of the charges contained in a detainer filed against him by another jurisdiction. The Agreement also provides a method by which other jurisdictions may gain temporary custody of a prisoner to try him on outstanding charges for which a detainer has been filed.

The State's interest protected by the Agreement, having a simplified procedure for gaining temporary custody of defendants imprisoned in other jurisdictions, is obvious. The Agreement, however, also protects the interests of imprisoned defendants in "removing the difficulties in securing speedy trials" and removing "the uncertainties which obstruct programs of prisoner treatment and rehabilitation" when a prisoner's status is clouded by the existence of untried charges on which detainers have been lodged. I.C. 35-2.1-2-4, Article 1.

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[1] The Agreement is codified in Michigan as Mich. Comp. Laws Annot. § 780.601 to .608 (1982).

Pursuant to the Agreement, after a detainer is filed,[2] the jurisdiction which filed it may present a written request for temporary custody of the prisoner to appropriate authorities of the state in which the individual is incarcerated. The Agreement provides a thirty-day period shall pass after receipt of the request before the request may be honored. The Agreement further provides,

> "[T]he appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty [30] days, and to contest the legality of his delivery."

I.C. 35-2.1-2-4, Article 9(7).

By mandate of the United States Supreme Court, unless waived, the imprisoned defendant must be afforded an extradition-type hearing before the request for temporary custody is honored. *Cuyler v. Adams*, (1981) 449 U.S. 433. Further, upon request of the state in which the individual is incarcerated, the state requesting temporary custody is required to present a certified copy of the indictment, information, or complaint which forms the basis of the detainer. I.C. 35-2.1-2-4, Article 5(2).

The State contends Ramirez' presence in Indiana was secured under the Agreement on both Cause 424, three

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[2] "Detainer" is not defined by the Agreement. However, a detainer has been described as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." *Webb v. State*, (1982) Ind., 437 N.E.2d 1330, 1331 (quoting S. Rep. No. 21-1356, 91st Cong., 2d Sess. 2 (1970)).

counts of dealing in a schedule IV controlled substance and Cause 470, two counts of dealing in marijuana. We disagree.

The certified copy of the two-count information in Cause 470 transmitted to the Michigan authorities was undoubtedly sufficient to serve as a detainer as to that cause. The controversy involves the document subsequently transmitted which incorrectly described the outstanding charge as a three-count information for dealing in *marijuana* under Cause 424. This document was apparently understood by Michigan authorities to refer to the two-count dealing in marijuana information transmitted earlier. The record shows Ramirez was informed in writing of the following outstanding information against him: "Howard County, Indiana—two counts of delivery of marijuana; bench warrant." Record at 559. Further, there is evidence the Michigan authorities verbally informed Ramirez his return to Indiana was requested to stand trial on charges of dealing in Marijuana, a class D felony.

Based on this evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the terms of the Agreement. The fact the Agreement on Detainers Form V transmitted to Michigan had typed upon it "Cause Number 424" is not sufficient evidence to the contrary.

Ramirez' contention on appeal, as in his motion, is the information in Cause 424 should be dismissed because of the State's violation of the provision of the Agreement providing:

> "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [or] complaints which form the basis of the detainer or detainers or for the prosecution on any other

> charge or charges arising out of the same transaction."

I.C. 35-2.1-2-4, Article 5(d). Therefore, Ramirez contends, because the State was unable under the Agreement to try him on a charge not forming the basis of a detainer or arising out of the same transaction, the information in Cause 424 must be dismissed and his conviction reversed.

The interpretation of this provision of the Agreement is an issue of first impression in Indiana.[3] For the purposes of this discussion, we assume, as Ramirez asserts, that the provision was included in the Agreement to protect imprisoned defendants in his position from unwittingly consenting to be returned to another jurisdiction for trial on minor charges only to be tried, once returned, on far more serious outstanding charges.

Nevertheless, there is no merit to Ramirez' argument the information must be dismissed. Jurisdiction over Ramirez' person was not defeated by the manner in which he was brought before the court to stand trial on the

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[3] Ramirez has directed us to, and independent research has revealed, no Indiana cases concerning this particular provision of the Agreement. We do note the presence of Indiana cases holding violations of the Agreement's provisions designed for the protection of the imprisoned defendant are waived unless timely raised at the trial level. *Scrivener v. State*, (1982) Ind., 441 N.E.2d 954 (speedy trial, Article 3(a);) *Webb v. State*, (1982) Ind., 437 N.E.2d 1330 (return without trial, Article 4(e)).

Our research has uncovered cases in other jurisdictions having factual situations similar to Ramirez'. *See Saunders v. State*, (1978) Del., 397 A.2d 548; *State v. Casuso*, (1977) Iowa, 253 N.W.2d 919 (crime committed while in temporary custody under Agreement); *People v. Browning*, (1981) 108 Mich. App. 281, 310 N.W.2d 365 (waived because not raised before or during trial); *Commonwealth v. Frison*, (1981) 301 Pa.Super. 498, 448 A.2d 18 (defendant's presence at his request); *State v. Tyson*, (1980) Tenn. Crim.App., 603 S.W.2d 748 (habitual criminal charge "arising out of same transaction"); *Bokemeyer v. State*, (1981) Tex.Crim.App., 624 S.W.2d 909 (reindictment of same charge). However, in few cases has the substantive issue been before the court as it is here. *See Brown v. District Court*, (1977) 194 Col. 1225, 571 P.2d 1091.

charges in Cause 424. The manner in which a defendant is brought before the court has no effect upon the court's jurisdiction over him. As stated by the United States Supreme Court in *Firsbie v. Collins*, (1952) 342 U.S. 519, 522 (footnote omitted).

> "This Court has never departed from the rule announced in *Ker v. Illinois*, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases."

We acknowledge one of the purposes of the Agreement, affording imprisoned individuals certain statutory rights, is not served where a jurisdiction prosecutes an individual outside the Agreement. Nevertheless, we fail to see how the other avowed purpose of the Agreement, providing a simplified procedure whereby individuals imprisoned in one jurisdiction may be brought to trial on outstanding charges in another jurisdiction, would be served by dismissing the charge against Ramirez.

Although we do not countenance the State's failure to comply with the provisions of the Agreement as to Cause 424, the State's failure does not warrant dismissal of this case. *See Brown v. District Court*, (1977) 194 Colo. 1225, 571 P.2d 1091 (detainer). *Cf. Martin v. State*, (1978) 176 Ind.App. 503, 376 N.E.2d 498 (extradition). This is not to say Ramirez may not have a remedy for the State's failure to file a detainer against him on Cause 424 before trying him in that cause. However, dismissal of the information is not the remedy. The trial court did not commit error in denying his motion to dismiss.

II

Ramirez, having raised at trial the defense of entrapment under I.C. 35-41-3-9 (Burns Code Ed., Repl. 1979), challenges the sufficiency of the evidence showing his predisposition to commit the crime. When the defense of

entrapment is raised, the State must prove 1) the prohibited conduct was not the product of the persuasive efforts of law enforcement officials or 2) regardless of law enforcement efforts, the accused was predisposed to engage in the conduct. *Marts v. State*, (1982) Ind., 432 N.E.2d 18.

The question of predisposition, one of subjective intent, is for the trier of fact. *Voirel v. State*, (1980) Ind.App., 412 N.E.2d 861. Our standard of review of sufficiency of the evidence to support a finding of predisposition, as on all sufficiency of the evidence questions, is clear. We will not weigh conflicting evidence nor judge the credibility of the witnesses. Rather, we will look to the evidence most favorable to the State, together with all reasonable inferences which may be drawn therefrom. If there is evidence of probative value to support the decision of the fact finder, the conviction will not be disturbed. *Everroad v. State*, (1982) Ind., 442 N.E.2d 994. Predisposition may be established by circumstantial evidence. *Voirol v. State*, 412 N.E.2d at 863.

Here, the evidence reveals a Kokomo police informant, Bruce Hamlin (Hamlin), was approached by Ramirez in January 1979 during Hamlin's employment as a courthouse janitor. Ramirez inquired if Hamlin would be interested in selling some controlled substances for him. Subsequently, on January 28, 1979, at Hamlin's residence, Ramirez sold Hamlin a number of tablets later determined to contain diazepam and phenobarbitol. This buy was not controlled by law enforcement officers and Hamlin paid for the drugs with his own money. He was later reimbursed when he turned the tablets over to the police.

On March 9, 1979, Hamlin, who had been searched and wired for sound by the police, purchased fifty (50) methaqualone, diazepam, and phenobarbital tablets from Ramirez. The police monitored this purchase. No money passed to Ramirez at this time because the transaction was a "front" deal with payment to be made at a later date. On March 12, 1979, again searched and wired for

sound, Hamlin paid Ramirez $100 owed for the tablets received on March 9.

Later in the day on March 12, 1979, Hamlin, again searched and wired for sound, purchased an additional fifty tablets containing methaqualone, diazepam, and phenobarbital from Ramirez. The deal was again "fronted" and the tablets were not paid for by Hamlin until March 20, 1979. When Ramirez was arrested pursuant to warrant on March 20, 1979, he was found in possession of five of the $20 bills the police had given Hamlin to pay for the tablets received from Ramirez on March 12, 1979.

Ramirez contends that because he was not found to possess any additional controlled substances at his arrest and because the evidence shows Hamlin instigated the purchases on January 28, 1979, March 9, 1979, and March 12, 1979, his conviction must be reversed. Ramirez contends he was not predisposed to sell the controlled substance and was thus entrapped as a matter of law. Ramirez is incorrect.

Although the actual purchases were instigated by Hamlin, the evidence shows it was Ramirez who, unsolicited, first approached Hamlin with the suggestion Hamlin sell drugs which Ramirez would supply. Further, the evidence shows not an isolated sale, but a series of transactions in controlled substances between Ramirez and Hamlin. This evidence, albeit circumstantial, is sufficient to support the jury's determination Ramirez was predisposed to sell a schedule IV controlled substance.[4] *See Silva v. State*, (1980) Ind.App., 410 N.E.2d 1342 (multiple sales to officers as one circumstance tending to show predisposition).

Ramirez also argues Hamlin's testimony was inherently unbelievable because he was a police informant against

---

[4] The record also contains testimony of another individual to whom Ramirez had been selling schedule IV controlled substances shortly before Ramirez's arrest in March 1979. Ramirez had also inquired whether this individual "could get rid of some of them," *i.e.*, sell some of the substances, for Ramirez. Record at 917.

whom charges were pending at the time of the transactions with Ramirez. We disagree. Hamlin's veracity was certainly open to question. However, the record shows the jury was made aware of his criminal history and the possibility of benefits flowing to him in exchange for information he provided and his testimony. The jury, who was in a better position than we to pass upon his credibility, apparently chose to believe Hamlin. We cannot say no reasonable person would have reached that conclusion. *Bentley v. State*, (1981) Ind., 414 N.E.2d 573.

III.

Ramirez contends the trial court erred in ordering his sentence for dealing in a schedule IV controlled substance, Cause 424, and his sentence for dealing in marijuana, Cause 470, to be served consecutively. Having failed to object at the sentencing hearing or to raise the issue in his motion to correct errors, Ramirez necessarily claims this sentencing error is fundamental error.

I.C. 35-50-1-2 (Burns Code Ed., Repl. 1979) provides:

> "(a) Except as provided in subsection (b) of this section, the court shall determine whether terms of imprisonment shall be served concurrently or consecutively.
>
> (b) If a person commits a crime:
>
> (1) After having been arrested for another crime; and
>
> (2) Before the date he is discharged from probation, parole, or a term of imprisonment imposed for that other crime;
>
> the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed."

Ramirez' argument is twofold. He first contends he was improperly sentenced under I.C. 35-50-1-2(b), the

subsection making consecutive sentencing mandatory in certain enumerated situations. He argues his situation does not fall within subsection (b) of the statute with the result his sentence was outside the scope of statutory authority and therefore was fundamental error. We argee with Ramirez that sentencing without statutory authority produces fundamental error. *See Rihl v. State*, (1980) Ind.App., 413 N.E.2d 1046 (prior law vesting authority in trial judge to impose consecutive sentences only where statutorily authorized).

The record of the sentencing hearing shows the sentences for the two crimes were pronounced at the same time. The record further shows the trial judge did not disclose his reasons for imposing consecutive terms. However, Ramirez admits in his brief he was free on bond on Cause 424 when he committed the crime charged in Cause 470, dealing in marijuana.

Ramirez argues that I.C. 35-50-1-2(b) requires mandatory consecutive sentences only where a defendant is *on* parole, probation or serving a term of imprisonment at the time he commits a second offense. Therefore, because he was out on bond and not on probation or imprisoned, Ramirez argues subsection (b) is inapplicable to him.

Initially, we note the statutory language does not require a defendant to be "on" parole, probation or serving a term of imprisonment. Rather, the statutory language speaks of a person who commits a crime during the time period 1) after he is arrested for another crime, and 2) before he is discharged from probation, parole or imprisonment for that other crime. If the legislature had intended the circumstances under which consecutive sentences are mandatory to be limited to the time a defendant is *on* parole, probation, or imprisoned, it is not readily apparent why it included the "after having been arrested" language.

Ramirez directs our attention to the predecessor statute, I.C. 35-8-7.5-1 (Burns Code Ed., Supp. 1977), which specifically addressed the issue of a defendant who committed

a crime while released on bond on a previous charge. Ramirez argues the repeal of this statute and the substitution of I.C. 35-50-1-2(b) evidences the legislative intent to exclude commission of a crime while out on bond as an instance where consecutive sentences are mandatory. We disagree. *See* Governor's Conference on the Indiana Penal Code (1977) at 142 (interpreting I.C. 35-50-1-2 as follows: "The court may impose consecutive sentences if a person commits a second crime while released on bail, probation, or parole, or while confined or an escapee from confinement. Otherwise, the court has discretion as to whether to impose consecutive or concurrent sentences for 2 or more crimes.") *See also Chandler v. States*, (July 26, 1983) Ind. No. 1182 S 430 (crime committed while escaped from incarceration; concurrent sentences reversed because consecutive sentences mandatory). *Contra Garrett v. State*, (1980) Ind.App., 411 N.E.2d 692 (escape).

Ramirez cites *Haggard v. State*, (1983) Ind., 445 N.E. 2d 969, to support his view. Although at first blush some of the language appears to support his position, a careful reading of *Haggard* reveals the Supreme Court was not interpreting I.C. 35-50-1-2(b) but was simply holding the fact scenario in *Haggard* rendered the mandatory provision of the statute inapplicable.[5] Thus, in imposing consecutive sentences in *Haggard*, the trial court was operating at its discretion as authorized by I.C. 35-50-1-2(a), not by law as provided in I.C. 35-50-1-2(b).

However, even assuming Ramirez is correct in his contention his situation does not fall within subsection (b) of the statute mandating consecutive sentences, the trial

---

[5] In *Haggard v. State*, (1933) Ind., 445 N.E.2d 969, the trial court ordered the defendant's commitment to be served consecutively to a commitment for offenses in another county. However, the crimes which resulted in the two commitments were all part of the same transaction. Therefore, factually, I.C. 35-50-1-2(b) Burns Code Ed., Repl. 1979) was inapplicable because an arrest did not intervene between the series of offenses that resulted in the two commitments.

judge was not without authority to order consecutive sentences in this case. Subsection (a) of I.C. 35-50-1-2 endows a trial court judge with discretion in ordering consecutive or concurrent sentences in all situations not enumerated in subsection (b).

Thus, Ramirez' second argument, that the judge committed fundamental error in failing to articulate his reasons for imposing the consecutive sentences, is a contention the trial judge abused his stattuory discretion. Although such an abuse of judicial discretion is erroneous, *see Brown v. State*, (1982) Ind., 442 N.E.2d 1109; *Taylor v. State*, (1982) Ind., 442 N.E.2d 1087, it does not rise to that level of errors deemed to be fundamental. Therefore, having failed to raise this error at the appropriate time, Ramirez has waived it.[6]

IV.

Ramirez' final contention is the trial court erred in failing to grant him 322 days credit time for the time he spent in the Howard County, Indiana jail awaiting trial and sentencing in Cause 424 and Cause 470. The 322 days represent the time between the date of his return to Indiana from his incarceration in Michigan and the date of his sentencing in Cause 424 and Cause 470. Citing *Burnett v. State*, (1982) Ind., 439 N.E.2d 174 and *Dolan v. State*, (1981) Ind.App., 420 N.E.2d 1364, Ramirez contends the 322 days should be credited to the aggregate of the consecutive sentences he received in Cause 424 and Cause 470.

---

[6] In any event, reviewing the record we find in the presentence investigation report numerous aggravating circumstances which would justify imposing consecutive sentences. Given the opportunity by advisement in the motion to correct errors, the trial court easily could have provided a statement of aggravating circumstances justifying imposition of consecutive sentences. Thus, according to our Supreme Court in *Beasley v. State*, (1983) Ind., 445 N.E.2d 1372, the error alleged by Ramirez is not fundamental (inadequate statement of aggravating circumstances to enhance sentence).

The State argues because Ramirez apparently received credit against his Michigan sentence for the days he was in the Howard County Jail awaiting trial and sentencing on the Indiana drug charges,[7] he is not entitled to also receive credit time for those days in Indiana. The State is incorrect. There is no indication the sentences in Cause 424 and Cause 470 were to run consecutively to the Michigan sentence. Because the Michigan and Indiana sentences must therefore be assumed to be concurrent, it would appear Ramirez was entitled to have the 322 days credited to both his Michigan sentence and to the aggregate of the two Indiana sentences. *See Simms v. State*, (1981) Ind.App., 421 N.E.2d 698; *Dolan v. State*, 420 N.E.2d 1364 (interpreting I.C. 35-30-6-3 (Burns Code Ed. Repl. 1979)).

However, our review of the record of the proceedings has apprised us the credit time situation is more complicated than the parties' arguments have made it appear. Although not discussed by the parties, the record reveals that in calculating Ramirez' credit time the trial court considered a third Indiana sentence, one arising as a result of a conviction of theft under Cause 427. It appears from the dialogue between the trial judge and Ramirez' attorney at the sentencing hearing that the 322 days were to be credited to Ramirez' theft sentence. Record at 1038. However, there is nothing in the record presented to us to indicate the 322 days actually were credited to the theft sentence or to indicate whether the theft sentence was to be served consecutively or concurrently with the drug sentences. Therefore, although the law favors Ramirez' position, we lack sufficient factual data to enable us to apply the law.

Thus, we remand to the trial court with instructions to conduct a hearing to recalculate Ramirez' credit time as

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[7] The Agreement on Detainers, I.C. 35-2.1-2-4, Article 5(f) provides that when a prisoner is in the temporary custody of a requesting state, time being served on the prisoner's sentence in the sending state shall continue to run.

applicable to Cause 427 (theft) as well as to Cause 424 and Cause 470 (drug charges).[8] In all other respects, the trial court's decision is affirmed.

Buchanan, C. J., concurs.

Sullivan, J., concurs.

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[8] The trial court's reconsideration on remand should include an additional factor. Ramirez argues his bail bo[illegible] in Cause 424 was released two days after his return to Indiana [illegible] Michigan. Thus, he contends, there is no doubt his presence in t[illegible] Howard County Jail was "as a result of" the charges pending in Cause 424. The record presented us in Cause 424 does indeed indicate a bond was released, but the bond is described as an "appeal" bond. Record at 6, 160. Further, the record of the sentencing hearing indicates the bond released was the appeal bond issued in the theft case, Cause 427. The status of bond, if any, in Cause 424 and Cause 470, is not clear from the record. Because the bond status may affect the credit time calculation, *see DeWees v. State*, (1983) Ind.App., 444 N.E.2d 332, the trial court's reconsideration on remand should include this issue.

DENIAL OF PETITION TO TRANSFER TO SUPREME COURT OF INDIANA

Appellant's Petition to Transfer is hereby DENIED this 11th day of May, 1984, without opinion.

All Justices concur.

/s/ Roger O. DeBruler
ROGER O. DEBRULER
Acting Chief Justice
of Indiana

PETITION FOR CERTIORARI GRANTED
OCTOBER 29, 1984

SUPREME COURT OF THE UNITED STATES

No. 84-5059

PATRICK RAMIREZ, PETITIONER

v.

INDIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF INDIANA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 29, 1984

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No. 84-5059

IN THE

Supreme Court of the United States

October Term, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

BRIEF OF RESPONDENT

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QUESTION PRESENTED FOR REVIEW

Is the Petitioner entitled to a reversal of his conviction under Cause 424 due to a trial in an Indiana court for crimes (Cause 424) which were not set forth in a proper detainer and which did not arise out of the same transaction as the criminal charges (Cause 470) which formed the basis of a detainer filed by a prosecuting attorney to obtain temporary custody of the Petitioner under Article 4 of the Interstate Agreement on Detainers?

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No. 84-5059

IN THE

Supreme Court of the United States

October Term, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

BRIEF OF RESPONDENT

OPINION BELOW

The Court of Appeals of Indiana entered an opinion in this cause on October 26, 1983. The opinion is set forth in the joint appendix (J.A. 165-179) and is officially reported at 455 N.E.2d 609. A petition for rehearing was filed and was

denied by the Court of Appeals of Indiana on February 1, 1984. A petition for transfer was filed and was denied by the Supreme Court of Indiana, without opinion, on May 11, 1984 (J.A. 180).

STATEMENT OF THE CASE

On March 20, 1979, the Petitioner, Patrick Ramirez, was charged by information (Cause 424) with three counts of dealing in a schedule IV controlled substance, a Class C felony (J.A. 2-15). Thereafter, on April 5, 1979, the Petitioner waived formal arraignment, entered a plea of not guilty, requested a jury trial, and was released on bond (J.A. 18-21). On November 16, 1979, the Petitioner moved to withdraw his plea of guilty and to enter into a plea agreement with the State (J.A. 23-38). The trial judge, however, rejected the agreement and the cause was set for trial on December 14, 1979 (J.A. 35). Later, on February 6, 1980, the Petitioner was charged by information (Cause 470) with two counts of dealing in marijuana (J.A. 39-42).

On November 19, 1980, the Petitioner was incarcerated in the State Prison of Southern Michigan due to a conviction for dealing in cocaine (R.561, 576). On March 16, 1981, the Howard County, Indiana prosecuting attorney mailed to the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, and requested that the information be filed as a detainer against the Petitioner (J.A. 92-99). On June 23, 1981, the prosecuting attorney mailed on Agreement on Detainers, Form V, which notified the State Prison of Southern Michigan that the Petitioner was charged with three counts of dealing in marijuana under Cause 424 (R.555-556, J.A. 90-91). The information set forth in Form V, however, was erroneous. The form should have stated that the Petitioner was charged with three counts of dealing in a schedule IV controlled substance, rather than dealing in marijuana (R.587-589).

By means of the Michigan Department of Corrections Agreement on Detainers, Form I, the Michigan warden notified the Petitioner that an information (Cause 470) alleging two counts of dealing in marijuana had been filed against him by the Indiana prosecutor (R.559, J.A. 103-110). After the Petitioner was informed of the provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana (Cause 470) (R.561-564, 567).

The Petitioner returned to Indiana on July 21, 1981 (R.580). On July 23, 1981, prior to trial in Cause 424, the State and the Petitioner entered into a second plea agreement whereby the Petitioner agreed to plead guilty to Count I, dealing in a schedule IV controlled substance (J.A. 43-46). The State consented to dismiss Count II in Cause 424 and also recommended that the sentence imposed in Cause 424 be served concurrently with the Petitioner's sentence in Cause 470 and the term of imprisonment imposed in the State of Michigan (J.A. 43-46). Subsequently, on August 17, 1981, the Petitioner moved to withdraw his plea of guilty and requested a jury trial (J.A. 47-50). The trial court granted the request (J.A. 47). Thereafter, on January 15, 1982, the Petitioner filed a motion to dismiss the information in Cause 424 asserting that the Michigan authorities had failed to inform him, in writing, of the existence, source, and contents of the detainer filed in that cause pursuant to the Interstate Agreement on Detainers, Article 9(7), IC §35-2.1-2-4 (Burns Repl. 1979); recodified at IC §35-33-10-4 (Burns Supp. 1984) (J.A. 51-58). After a hearing, the trial judge denied the motion (J.A. 59-87, 111).

The Petitioner was subsequently convicted of dealing in a schedule IV controlled substance (Cause 424) (J.A. 113-116). On June 8, 1982, the Petitioner was sentenced, in Cause 424, to a five year term of imprisonment to run consecutively to a two year term imposed in Cause 470 (J.A. 117-121). On appeal to the Court of Appeals of Indiana, the

Petitioner argued that the trial court erred by denying his motion to dismiss. The Court of Appeals, however, ruled that although the Petitioner's presence in Indiana was improperly secured under the Agreement, in Cause 424, dismissal of the conviction was not warranted. The court ruled that the manner in which a defendant is brought before a court has no effect upon the court's jurisdiction over him. *Ramirez v. State* (1983), Ind. App., 455 N.E.2d 609 (J.A. 165-179). Thereafter, the Supreme Court of Indiana, on May 11, 1984, denied the Petitioner's petition for transfer, without opinion (J.A. 180). On July 13, 1984, the Petitioner filed a *pro se* petition for writ of certiorari which was granted on October 29, 1984 (J.A. 181). On November 13, 1984, the Court granted the Petitioner's motion for appointment of counsel. The Petitioner filed a brief on the merits on January 14, 1985.

SUMMARY OF THE ARGUMENT

The writ of certiorari, in the instant case, should be dismissed as improvidently granted. A substantial federal question is absent since the Agreement is not a compact within the scope of the Compact Clause. The Agreement does not enhance state power at the expense of federal supremacy.

Further, even if the Agreement is subject to federal interpretation, a violation of the Agreement is not recognizable as a lack of personal or subject matter jurisdiction. It is well settled that the power of a court to try a person for a crime is not impaired by the fact that the person is forcibly brought within that court's jurisdiction. *Frisbie v. Collins* (1952), 342 U.S. 519, 72 S.Ct. 509.

Finally, the appropriate remedy for a breach of the Agreement, in this case, is the affirmance of the Petitioner's otherwise valid conviction under Cause 424 since the purpose/goals of the Agreement have been achieved. The Petitioner was afforded the right that the

Agreement, in general, was meant to secure—a speedy trial on outstanding charges. If dismissal of the conviction in Cause 424 is considered the appropriate remedy for a violation of Article 5(d) and Article 9(7), the Agreement could be used, not for the purpose of protecting any legitimate interest a prisoner may have in his rehabilitation and a speedy trial, but rather, to secure relief from an otherwise lawful conviction. To so construe the Agreement would make a mockery of the jury's verdict and serve to undermine the interests of justice.

INTRODUCTION

It is undisputed that the Petitioner's presence in Indiana for trial on Cause 424, dealing in a schedule IV controlled substance, was secured outside of the Interstate Agreement on Detainers, Article 5(d) and Article 9(7), IC §35-2.1-2-4 (Burns Repl. 1979); recodified at IC §35-33-10-4 (Burns Supp. 1984) (hereinafter, Agreement).[1] Thus, three issues must be resolved: whether the Agreement is within the scope of the Compact Clause; whether the Indiana trial court had jurisdiction to try the Petitioner under Cause 424, and whether reversal of the Petitioner's conviction under Cause 424 is an appropriate remedy for a breach of the Agreement.

In order to resolve this issue, it is necessary to determine whether the Agreement is a compact within the scope of the Compact Clause because it does not enhance state power at the expense of federal supremacy.[2] If the Agreement is

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[1]The Agreement is set forth, in its entirety, in Petitioner's Appendix A and Appendix B.

[2]This proposition is contrary to the majority holding in *Cuyler v. Adams* (1981), 449 U.S. 433, 101 S.Ct. 703. In *Cuyler*, the Court determined that the Agreement was a compact within the scope of the Compact Clause and subject to federal interpretation.

found to be an interstate compact, the Court should consider the applicability of the established principles set forth in *Ker v. Illinois* (1886), 119 U.S. 436, 7 S.Ct. 225 and *Frisbie v. Collins* (1952), 342 U.S. 519, 72 S.Ct. 509. If the first two issues are decided adversely to the Respondent, it will be necessary to determine what, if any, remedy is available to the Petitioner.

BACKGROUND
INTERSTATE AGREEMENT ON DETAINERS

The Agreement, a uniform law enacted by the majority of the states and the federal government, encourages the expeditious and orderly disposition of criminal charges and determination of the proper status of any and all detainers[3] based on untried indictments, informations, or complaints. The Agreement was promulgated due to the ease of filing detainers, obstacles in the prompt rendition of a prisoner, and the risk of loss, to both the prosecution and defense, of witnesses or evidence during protracted delays caused by the incarceration of a prisoner in another state.

Moreover, in recommending the adoption of the Agreement, the Council of State Governments noted that prison administrators were "thwarted in [their] effort[s] toward rehabilitation [because t]he inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program." Council of State Governments, *Suggested State Legislation Program For 1957*, 74 (1956). The Council of State Governments also noted that the existence of detainers presented problems in sentencing. When

[3]The term "detainer" is not defined in the Agreement. It has been otherwise defined, however, as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." *Ridgeway v. United States*, (6th Cir. 1977) 558 F.2d 357. The detainer, itself, does nothing to affect the prosecution of a prisoner.

detainers had previously been filed against a defendant, the sentencing judge would hesitate to give as long a sentence as he thought might otherwise be indicated, there being a possibility that the defendant would be required to serve subsequent sentences. The Council stated that "proper sentencing, as well as proper correctional treatment, is not possible until the detainer system is modified." Council of State Governments, supra, 74 (1956).

It was against this scenario, therefore, that the Joint Committee on Detainers published a statement of principles which later served as the underpinnings of the Agreement. The guiding principles of the Agreement, which is to be liberally construed to effectuate its purposes, are set forth in *United States v. Mauro* (1978), 436 U.S. 340, 349, 98 S.Ct. 1834, 1842:

> 1. Every effort should be made to accomplish the disposition of detainers as promptly as possible.
>
> 2. There should be assurance that any prisoner released to stand trial in another jurisdiction will be returned to the institution from which he was released.
>
> 3. Prison and parole authorities should take prompt action to settle detainers which have been filed by them.
>
> 4. No prisoner should be penalized because of a detainer pending against him unless a thorough investigation of the detainer has been made and it has been found valid.
>
> 5. All jurisdictions should observe the principles of interstate comity in the settlement of detainers, and each should bear its own proper burden of the expenses and effort involved in disposing of the charges and settling detainers.

A SUBSTANTIAL FEDERAL QUESTION IS ABSENT, IN THIS CASE, SINCE THE AGREEMENT IS NOT A COMPACT WITHIN THE SCOPE OF THE COMPACT CLAUSE

Contrary to the majority holding in *Cuyler v. Adams* (1981), 449 U.S. 433, 101 S.Ct. 703, the Respondent submits that the Agreement is not a compact within the scope of the Compact Clause[4] because it does not enhance state power at the expense of federal supremacy. In *New Hampshire v. Maine* (1976), 426 U.S. 363, 96 S.Ct. 2113, the Court ruled that the "application of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of the political power in the States, which may encroach upon or interfere with the just supremacy of the United States'." *Id.*, at 369, 96 S.Ct. at 2117, quoting *Virginia v. Tennessee* (1893), 148 U.S. 503, 519, 13 S.Ct. 728, 734. Further, in *United States Steel Corp. v. Multistate Tax Commission* (1978), 434 U.S. 452, 471, 98 S.Ct. 799, 812, the Court reaffirmed the above-stated rule since the rule "states the proper balance between federal and state power with respect to compacts and agreements among States." In applying the rationale of these decisions to the Agreement, it is apparent that state power is not enhanced to the detriment of federal sovereignty. In comparing the Agreement with the multistate tax compact in *Multistate Tax Commission*, any state may join the Agreement. Therefore, the power of member states is not promoted above that of non-member states.

In addition, whether a particular state enactment is within the Compact Clause depends on whether it requires

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[4]Article I, section 10, clause 3 of the United States Constitution commonly referred to as the "compact clause," provides: "No state shall, without the consent of Congress, ... enter into any agreement or compact with another state, or with a foreign power..."

the consent of Congress.[5] The majority in *Cuyler* framed its inquiry as "whether the Detainer Agreement is a congressionally sanctioned interstate compact within Article 1, section 10 of the Constitution" and concluded that "the consent of Congress transforms the State's agreement into federal law under the Compact Clause." In *Cuyler*, the majority did not consider an essential step in a Compact Clause analysis: whether the Agreement falls within the scope of the Compact Clause. In *Virginia v. Tennessee*, *supra*, the Court stated that an agreement does not fall within the scope of the Compact Clause if it does not increase the political power of the states in a way that encroaches upon federal supremacy. Nevertheless, the majority did not apply this test to whether the Agreement actually requires congressional consent. Rather than resolving this question by means of a *Virginia v. Tennessee* analysis, the Court suggested that the Agreement encroaches upon federal sovereignty because it is a subject matter "appropriate for congressional legislation." *Cuyler*, 449 U.S. at 442, 101 S.Ct. at 708.

It is apparent, however, that the "appropriate for congressional legislation" test is less restrictive than the "encroachment upon federal supremacy" test. Under the earlier encroachment test, only exceptional arrangements were within the parameters of the Compact Clause. Indeed, most cases decided after *Virginia v. Tennessee* concluded that the compact in question was not within the scope of the Compact Clause and, therefore, was to be interpreted pursuant to state law.[6] Thus, under *Cuyler*, all interstate

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[5] *See* Engdahl, *Construction of Interstate Compacts: A Questionable Federal Question*, 51 Va.L. Rev. 987, 1017 (1965): "[T]he construction of a compact not requiring consent even if Congress has consented, will not present a federal question. . ."

[6] *See, e.g., North Carolina v. Tennessee* (1914), 235 U.S. 1, 35 S.Ct. 8; *State v. Doe* (1962), 149 Conn. 216, 178 A.2d 271.

compacts, whether or not they encroach upon federal supremacy, are transformed into federal law if they not only involve an area in which Congress might legislate, but also receive congressional consent.

An extraordinary broadening of the scope of the Compact Clause is the effect of *Cuyler*. For instance, a congressionally approved state compact which involves any aspect of interstate commerce will present, under *Cuyler*, a federal question since interstate commerce is an appropriate subject for congressional legislation. *See United States v. South-Eastern Underwriters Association* (1944), 322 U.S. 533, 64 S.Ct. 1162. It is appropriate to preserve the supremacy of the federal government. The expansive standard set forth in *Cuyler*, however, impinges upon state sovereignty. While the Court has indicated that interstate agreements are a more satisfactory means of resolving state controversies than judicial procedures, *New York v. O'Neill* (1959), 359 U.S. 1, 79 S.Ct. 564, the fact that compacts will be subject to federal interpretation may make states reluctant to enter into such agreements.

If the Agreement had been analyzed, in *Cuyler*, in terms of its encroachment upon federal supremacy, a different result might have been reached. In *Multistate Tax Commission*, the Court cited with approval *New York v. O'Neill* in which the constitutionality of the Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, 11 U.L.A. 1 (1936) was challenged. Although *O'Neill* did not specifically present a Compact Clause question, the statute at issue was "within the unrestricted area of action left to States by the Constitution." *New York v. O'Neill*, 359 U.S. at 6, 79 S.Ct. at 568. The conclusion in *Multistate Tax Commission* suggests that the Uniform Law to Secure the Attendance of Witnesses, like the multistate tax compact, was not within the scope of the Compact Clause. The impact of the statute in *O'Neill* and that of the Agreement are similar: both are to secure the attendance, at trial, of out-of-

state persons. If the Uniform Law to Secure the Attendance of Witnesses is not within the scope of Compact Clause, then neither is the Agreement. Thus, a substantial federal question, in this case, is absent.

EVEN IF THE AGREEMENT IS SUBJECT TO FEDERAL INTERPRETATION, A VIOLATION OF THE AGREEMENT IS NOT RECOGNIZABLE AS A LACK OF PERSONAL OR SUBJECT MATTER JURISDICTION

A violation of the Agreement is not recognizable as a claim of lack of subject matter jurisdiction—the power or authority conferred upon a court to decide a given type of case. *Hagans v. Levine* (1974), 415 U.S. 528, 94 S.Ct. 1372; *United States v. Edwards*, (2nd Cir. 1977) 564 F.2d 652. In *Ker v. Illinois* (1886), 119 U.S. 436, 7 S.Ct. 225, the Court ruled that the power of a court to try a person for a crime would not be impaired by the fact that the person was forcibly brought within that court's jurisdiction. The Court has consistently so ruled through a line of cases[7] leading to *Frisbie v. Collins* (1952), 342 U.S. 519, 72 S.Ct. 509 and beyond, *Gerstein v. Pugh* (1975), 420 U.S. 103, 95 S.Ct. 854; *United States v. Crews* (1980), 445 U.S. 463, 100 S.Ct. 1244. The *Ker- Frisbie* doctrine is rooted in the perception that:

> due process of law is satisfied when one present in court is convicted of crime after being fairly apprised of charges against him and after a fair trial in accordance with constitutional procedural safeguards.

Frisbie, 342 U.S. at 522, 72 S.Ct. at 512.

This doctrine, however, has been questioned in instances where a defendant's presence before a court is procured by methods which violate fundamental principles of due process recognized after *Frisbie* was decided. *See United*

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[7]*See, e.g., Mahon v. Justice* (1888), 127 U.S. 700, 8 S.Ct. 1204; *In re Johnson* (1897), 167 U.S. 120, 17 S.Ct. 735.

States v. Toscanino, (2nd Cir. 1974) 500 F.2d 267, 275. An analysis, however, of *Ker* and its progeny compels the conclusion that in cases other than those where constitutional rights are violated or where the conduct by which jurisdiction is obtained is egregious, a subsequent conviction will not be vacated. *United States ex rel. Lujon v. Gengler*, (2nd Cir. 1975) 510 F.2d 62, 64-66, *cert. denied*, 421 U.S. 1001.

In addition, a court once acquiring jurisdiction retains it until there is a final disposition of the matter or proceeding before it. Jurisdiction, once attached, is not lost by subsequent events. *State ex rel. Kelly v. Marion County Criminal Court, Division Three* (1978), 269 Ind. 46, 378 N.E.2d 833. In the present case, the Petitioner, on March 20, 1979, was charged by information (Cause 424) with three counts of dealing in a schedule IV controlled substance (J.A. 2-15). Thereafter, on April 5, 1979, the Petitioner waived formal arraignment, entered a plea of not guilty, and was released on bond (J.A. 18-21). Thus, the Indiana trial court was not divested of its jurisdiction over the Petitioner during the Petitioner's incarceration in Michigan. When the Petitioner returned to Indiana to stand trial on Cause 470 and Cause 424, the jurisdiction of the trial court continued through conviction and final judgment.

In addition, an examination of the Agreement disposes of the Petitioner's contention that the trial court was deprived of jurisdiction. The Agreement constitutes nothing more than a set of procedural rules. The procedures delineated in the Agreement do not rise to the level of constitutionally guaranteed rights and are neither fundamental nor jurisdictional[8] in nature. *United States v. Scheer*, (2nd Cir.

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[8]In *Camp v. United States*, (8th Cir. 1978) 587 F.2d 397, the court ruled that a violation of Article 4 of the Agreement by taking a state prisoner into federal custody and returning the prisoner to state custody without bringing him to trial was a non-jurisdictional error and did not deprive a district court of its jurisdiction to entertain a guilty plea when the prisoner was again transferred from state to federal custody to stand trial.

1984) 729 F.2d 164; *Kowalak v. United States*, (6th Cir. 1981) 645 F.2d 534. Articles 5(d) and 9(7) are procedural rules. A violation of these provisions neither affects the fairness and accuracy of the fact finding procedure nor affects other due process or fair trial rights. *Brown v. District Court* (1977), 194 Colo. 225, 571 P.2d 1091.

Violations of Article 5(d) and Article 9(7), in this case, were insufficient to divest the trial court of jurisdiction contrary to the general rule enunciated in *Frisbie, supra*. To interpret otherwise, would frustrate rather than promote the stated policies of the Agreement. While courts, of course, must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the reversal of the Petitioner's valid conviction under Cause 424. Indeed, the force of this justification becomes minimal where reversal is sought by a prisoner who has been afforded the opportunity for a full and fair trial. The Agreement protects no constitutional guarantees per se and transgression of its provisions does not amount to conduct so reprehensible as to mandate vacation of an otherwise validly imposed sentence. No factual basis for a deviation from the *Ker-Frisbie* doctrine exists in the instant case.

THE APPROPRIATE REMEDY FOR A VIOLATION OF THE AGREEMENT, IN THIS CASE, IS THE AFFIRMANCE OF THE PETITIONER'S OTHERWISE VALID CONVICTION UNDER CAUSE 424 SINCE THE PURPOSE/GOALS OF THE AGREEMENT HAVE BEEN ACHIEVED

It is undisputed not only that the Indiana prosecutor failed to set forth correct information concerning the offenses in Cause 424 in his notification to the warden of the Michigan prison, but also that the Michigan warden failed to notify the Petitioner of the existence of the second detainer. Hence, two questions arise. First, is the Petitioner entitled to a remedy under the facts? Second, is reversal of the Petitioner's valid conviction under Cause 424 an appropriate remedy? On these questions, the Agreement is

entirely silent. The Agreement, however, provides that dismissal of the indictment, information, or complaint is the appropriate sanction for other forms of non-compliance with its provisions. *See* Article 3,[9] Article 4(e), and Article 5(c). Where the Agreement provides sanctions for some violations, but is silent as to sanctions for other violations, the silence should be considered as evidence that the drafters of the Agreement did not intend to provide a remedy. *See also* Council of State Governments, *Suggested State Legislation Program For 1957* (1956). Nevertheless, the Petitioner argues that the language of Article 5(d) and Article 9(7) mandate that his conviction under Cause 424 be reversed.

It is the duty of courts to render an interpretation of the laws which will best serve the ends of justice. On the basis that a technicality should not be permitted to override justice, the general intention of the legislature must be considered in order to interpret the words of a statute in light of the purposes the legislature sought to serve. *Dickerson v. New Banker Institute, Inc.* (1983), 460 U.S. 103, 103 S.Ct. 986. In the present case, since the Agreement

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[9]Despite the fact that this case was handled under the rubric of Article 4 and not Article 3, in cases which interpret Article 3(c), a provision of the Agreement similar to Article 9(7), there is a split of authority as to the appropriate sanction to be imposed when officials of a custodial state do not comply with the mandate of Article 3(c). In *State v. Clark* (1977), 222 Kan. 65, 563 P.2d 1028, the Supreme Court of Kansas ruled that in the event of such noncompliance a defendant was limited to the raising of a constitutional challenge on speedy trial grounds. A contrary view places the burden of the custodial state's noncompliance on the prosecutor of the receiving state and holds that dismissal of the charges is the appropriate sanction. *People v. Lincoln* (1979), 42 Colo. App. 512, 601 P.2d 641. The Court of Appeals of Michigan, cognizant of the split of authority on this question, not only expressly stated that dismissal with prejudice may not always be the proper remedy for an Article 3(c) violation, but also ruled that dismissal is the proper remedy when officials had not made the "slightest effort" to assure a defendant received notice and advisement of his Interstate Agreement on Detainer rights. *People v. Bentley* (1982), 121 Mich. App. 36, 328 N.W.2d 389.

is entitled to a liberal construction,[10] it should not be given a construction so technical or narrow as to defeat its purposes or design. *Mohasco Corp. v. Silver* (1980), 447 U.S. 805, 100 S.Ct. 2486. Statutes should be interpreted to avoid unreasonable results whenever possible. *American Tobacco Co. v. Patterson* (1982), 456 U.S. 63, 102 S.Ct. 1534. With these maxims of statutory construction and the purpose of the Agreement in mind, it is apparent that the Petitioner's position has no support in either the language of the Agreement or its legislative history. The Agreement must not be read expansively to include what is not plainly embraced within the language of its provisions. It is just as important to recognize what a statute does not say as it is to recognize what it does say.

One of the purposes of the Agreement is to ensure the expeditious disposition of outstanding charges against a prisoner. In this case, the Indiana prosecutor acted swiftly under the Agreement and tried the Petitioner under Cause 470 and Cause 424 within the prescribed period of time. Although the Petitioner's presence in Indiana, for purposes of prosecution under Cause 424, was secured outside the Agreement, the Petitioner received the right that the Agreement, in general, was meant to secure— a speedy trial on outstanding charges.[11] *Wallace v. Hewitt*, (M.D. Penn. 1976) 428 F. Supp. 39, 42.

Further, the Petitioner does not allege that he was harmed by the violation. Dismissal of the conviction in

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[10]Article 9(1) of the Agreement provides in part that the "Agreement shall be liberally construed so as to effectuate its purposes."

[11]Compare, the Uniform Criminal Extradition Act, 11 U.L.A. 51 (1936); codified in Indiana as IC §35-33-10-3 (Burns Supp. 1984). Subsection 7 of the statute reads:

> "after a person has been brought back to this State upon extradition proceedings, he maybe tried in this State for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition."

Cause 424 is not justified where no legitimate interest of the Petitioner is defeated by the violation. *Sassoon v. Stynchcombe*, (5th Cir. 1981) 654 F.2d 371. The Petitioner was well aware of the offenses in Cause 424 and attempted to plead guilty to the offenses prior to his incarceration in Michigan. The Petitioner was given a fair trial and a full opportunity to contest the charge against him. If dismissal of the conviction in Cause 424 is considered the appropriate remedy for a violation of Article 5(d) and Article 9(7), the Agreement could be used, not for the purpose of protecting any legitimate interest a prisoner may have in his rehabilitation and a speedy trial, but rather, to secure relief from an otherwise lawful conviction. To so strictly construe the Agreement would make a mockery of the jury's verdict and serve to undermine the interests of justice. Legislative intent would be frustrated by permitting the release of the Petitioner already convicted of the charge. Due to substantial public interest in the finality of criminal convictions, reversal or even remand for notice and a hearing would encourage piecemeal litigation of claims of error and undercut the policy of achieving prompt and final judgments.

CONCLUSION

Accordingly, based on the above analysis, the violation of Article 5(d) and Article 9(7) is a nonjurisdictional error. In addition, policies of the Agreement were served, in this case, by the expeditious and orderly disposition of the Petitioner's charge. The Court, in reviewing the provisions of the Agreement, should not impute to the legislature a purpose to paralyze with one hand what it sought to promote with the other. *United States v. Raddatz* (1980), 447 U.S. 667, 100 S.Ct. 2406. The Petitioner's conviction on Cause 424 should not be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PATRICK RAMIREZ

Petitioner

v.

STATE OF INDIANA

Respondent

On Writ Of Certiorari To
The Court Of Appeals Of Indiana

REPLY BRIEF FOR PETITIONER

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Introduction

The position of the State of Indiana in its brief emphasizes starkly why the judgment of the Court of Appeals of Indiana must be reversed. In the State's view, despite its voluntary adherence to this interstate agreement, and despite this Court's decision in *Cuyler* v. *Adams*, 449 U.S. 433 (1981), the Interstate Agreement on Detainers (IAD) is "nothing more than a set of procedural rules" (Resp. Br. 12) to be interpreted by individual state courts without any concern for the needs of interstate federalism which led to its adoption. As we emphasized in our principal brief, such an interpretation cannot be squared with the text of the IAD or with the prior decisions of this Court.

In the following paragraphs, we shall briefly examine the principal areas where Indiana's failure to recognize its obligations to the other signatory states has resulted in a misinterpretation of the IAD.

Cuyler v. *Adams* Should Not Be Overruled

In its attempt to characterize the IAD as a simple state procedural rule rather than an interstate compact, the State goes far beyond the Question Presented[1] and devotes a substantial part of its presentation to urging that this Court overrule its recent ruling in *Cuyler*.[2] This amounts to nothing more than an untimely petition for rehearing in that case. "[A]ny departure from the doctrine of *stare decisis* demands special justification." *Arizona* v. *Rumsey*, 104 S. Ct. 2305, 2311 (1984). Indiana presents no arguments which were not considered by this Court in *Cuyler*. Nor does it suggest that the post-*Cuyler*

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[1] *Sup. Ct. R.* 34.1(a).

[2] We are at a loss as to why the State contends that the writ ought to be dismissed as improvidently granted when it is also arguing that the Court should overrule *Cuyler*.

experience of the states demonstrates that this Court was in error.[3]

Indeed, respondent's argument that *Cuyler* be overruled and that Indiana has no interstate obligations other than those of its own choosing appears to be the lynchpin of its entire position. For instance, one would expect that, after having argued that the Court should admit that it erred in *Cuyler*, the State would proceed, by way of alternative argument, to deal squarely with the key provisions of the IAD. However, throughout Indiana's brief, there continues a marked lack of concern for the obligation which it freely undertook toward the other forty-seven states (and the federal government) when it entered the interstate agreement. The State complains that interstate agreements such as this one "impinge[] upon state sovereignty." (Resp. Br. 10) It avoids, however, any significant analysis of the key provisions of the IAD which foster interstate cooperation.

Respondent Makes No Serious Attempt To Reconcile Its Position With The Provisions Of Section 5(g)

The most striking omission in the State's brief is its failure to confront seriously the plain language of section 5(g):

> For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in *the custody of and subject to the jurisdiction of the sending state.*
>
> (emphasis added)

As we pointed out in our principal brief (Petr. Br. 21 et. seq.), in the absence of the IAD, Indiana might well have

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[3] We note, for example, that since this Court's ruling in *Cuyler*, no state has withdrawn from the Agreement on the ground that interpretation of the IAD as a matter of federal law will, as respondent suggests, impinge on its sovereignty. (Resp. Br. 10)

been able to try the petitioner when it did under the rule of *Frisbie* v. *Collins*, 342 U.S. 519 (1952), and *Ker* v. *Illinois*, 119 U.S. 436 (1886), or under the theory of continuing jurisdiction suggested by respondent. (Resp. Br. 12) However, at the time of trial, Indiana's custody of petitioner was under the special provisions of the IAD. Petitioner was "on loan" from the State of Michigan and, under the Agreement, the "loan" was solely for the purpose of trial on Cause 470.

Whatever may have been the authority of Indiana to try the petitioner under other circumstances, its authority was restricted as long as the petitioner was in Indiana "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [sic] complaints which form the basis of the detainer. . . ." Art. § 5(d).

There is no question as to the applicability of the IAD. *Cf. Gottfried* v. *Cronin*, 192 Colo. 25, 27-28, 555 P.2d 969, 970-71 (1976); *State* v. *Clark*, 222 Kan. 65, ____, 563 P.2d 1028, 1030 (1977).[4] Nor, as the State concedes, is there any question that there was a violation of the IAD. (Resp. Br. 5) The only issue before the Court is whether the state trial court was, despite the existence of section 5(g), authorized to try the petitioner for Cause 424 while he was in Indiana under the IAD solely for trial on Cause 470. The trial court, having been placed on notice that proceeding to trial under Cause 424 was violative of the IAD, could have taken appropriate steps to ensure that the petitioner and the Governor of Michigan were given an appropriate opportunity to exercise their respective rights under the IAD. Petitioner submits that it was error for the trial court to proceed over his objection.

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[4] In these cases, as here, preliminary proceedings against the defendant had taken place previously in the demanding state, and the IAD was used to secure his return.

Respondent Has Failed To Recognize That, Under The IAD, Both Michigan And The Petitioner Also Have Protected Interests

Indiana's preoccupation with its own self-interest has also caused it to disregard in its analysis the interests of both its sister state and the petitioner. As we have noted in our principal brief, the petitioner had the right to convince the Governor of Michigan that he ought not be returned to Indiana on Cause 424. The Governor had the right to consider that request.[5] Neither was able to exercise his right.

Indeed, contrary to this Court's decision in *Cuyler*, Indiana largely ignores the fact that the IAD deals with two very distinct situations which implicate, in very different ways, the interests of the demanding state, the asylum state and the prisoner.[6] (Resp. Br. 14) *See Cuyler* v. *Adams*, 449 U.S. 433, 444 (1981). In situations under Article 3, where the prisoner is anxious to dispose of an outstanding detainer by insisting on his right to a speedy trial, it made good sense to provide specifically that failure to bring him to trial on all outstanding detainers within the demanding state would result in dismissal of

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[5] The State suggests—principally through its frequent citation of § 9(7)—that Michigan was at least partially at fault in misinforming the petitioner. It is clear, however, that the relevant misinformation was generated by Indiana—not Michigan—officials. (Resp. Br. 2) In any event, we are at a loss to see how any fault on Michigan's part (assuming arguendo that it did exist) would excuse the trial court from disregarding the clear mandate of § 5(g).

[6] As the United States Court of Appeals for the Seventh Circuit noted in a civil action arising out of this same transaction, the IAD does treat cases arising under Article 3 differently than those arising out of Article 4. Indeed, it was on this basis that the Court of Appeals found an "arguable violation" of the petitioner's rights. *Ramirez* v. *Bough*, No. 83-2702 (7th Cir. August 22, 1984) (unpublished), *petition for cert. filed*, 55 U.S.L.W. 3530 (U.S. Dec. 19, 1984) (No. 84-1013).

the underlying charges. In situations such as the present one, where the demanding state, not the prisoner, has initiated the demand for trial, it also makes sense to require that, if the prisoner is returned to the demanding state, it must try the prisoner expeditiously or suffer dismissal. Art. §§ 4(c),(e). One can hardly fault the drafters for not having provided explicitly for a remedy when the demanding state attempts to try a prisoner on a charge not mentioned in the detainer. Section 5(g) gives satisfactory direction: the "asylum" state maintains custody; the prisoner may not be tried.

Conclusion

Respondent urges this Court to avoid a decision which will "make states reluctant to enter into such agreements" as the IAD. However, it also insists that states ought not be held to the plain meaning of such agreements and, indeed, ought to be free to regard any substantive provision as a "technicality." (Resp. Br. 14) Such an approach is simply incompatible with the role which the interstate agreement was intended to play in the preservation of our federalism. States must be able to rely on their agreements if they are to work together and retain the initiative in resolving common problems. By working through such arrangements, states retain their sovereignty rather than lose it through the imposition of federal control. However, the agreements must mean what they say—and states must conform their conduct to the bargain.

Accordingly, petitioner respectfully prays that the judgment of the Court of Appeals of Indiana be reversed.

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